



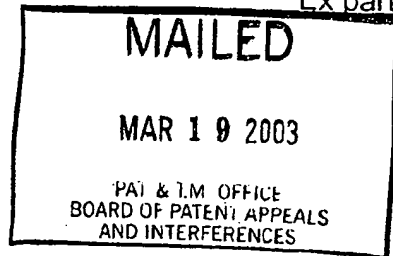
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 25

## UNITED STATES PATENT AND TRADEMARK OFFICE

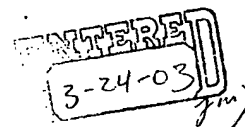
### BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Ex parte MARC A. JURGOVAN and MARTIN B. DIERL



Appeal No. 2002-2113  
Application No. 09/372,646

HEARD: March 4, 2003



Before ABRAMS, FRANKFORT, and NASE, Administrative Patent Judges.  
NASE, Administrative Patent Judge.

### DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1 to 26, which are all of the claims pending in this application.

We REVERSE.

### BACKGROUND

The appellants' invention relates to flexible packages having means for selectively re-closing the package after their initial opening (specification, p. 1). A copy of the claims under appeal is set forth in the appendix to the appellants' brief.

Claims 1 to 12 and 17 to 22 stand rejected under 35 U.S.C. § 103 as being unpatentable over Christoff<sup>1</sup>.

Claims 13 to 16 and 23 to 26 stand rejected under 35 U.S.C. § 103 as being unpatentable over Christoff in view of Thompson<sup>2</sup>.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the answer (Paper No. 15, mailed October 19, 2001) for the examiner's complete reasoning in support of the rejections, and to the brief (Paper No. 14, filed August 15, 2001) and reply brief (Paper No. 19, filed April 16, 2002) for the appellants' arguments thereagainst.

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<sup>1</sup> U.S. Patent No. 4,617,683.

<sup>2</sup> U.S. Patent No. 5,224,779.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. Upon evaluation of all the evidence before us, it is our conclusion that the evidence adduced by the examiner is insufficient to establish a prima facie case of obviousness with respect to the claims under appeal. Accordingly, we will not sustain the examiner's rejection of claims 1 to 26 under 35 U.S.C. § 103. Our reasoning for this determination follows.

In rejecting claims under 35 U.S.C. § 103, the examiner bears the initial burden of presenting a prima facie case of obviousness. See In re Rijckaert, 9 F.3d 1531, 1532, 28 USPQ2d 1955, 1956 (Fed. Cir. 1993). A prima facie case of obviousness is established by presenting evidence that would have led one of ordinary skill in the art to combine the relevant teachings of the references to arrive at the claimed invention. See In re Fine, 837 F.2d 1071, 1074, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988) and In re Lintner, 458 F.2d 1013, 1016, 173 USPQ 560, 562 (CCPA 1972).

All the claims on appeal recite the combination of (1) a flexible package and (2) a food product stored in the package. The flexible package comprises, inter alia, a front wall and a rear wall sealed together at a top seal; first and second engagement

members engaged together; and the top seal and the engagement members being pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members.

After setting forth the teachings of Christoff, the examiner ascertained<sup>3</sup> (answer, p. 4) that Christoff does not specifically recite the use of potato chips as the packaged product. The examiner then concluded that it would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appears to be chips in Figures 1-2 and also teaches the conventionally of packaging potato chips in bags (column 2, line 24).

The appellants do not dispute the examiner's determination that it would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff. The appellants do dispute the examiner's ascertainment of the differences between the claimed subject matter and Christoff. Specifically, the appellants argue (brief, pp. 4-4-7; reply brief, pp. 1-3) that Christoff does not disclose a flexible package having the combination of (1) a front wall and a rear wall sealed together at a top seal; (2) first and second engagement members engaged together;

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<sup>3</sup> After the scope and content of the prior art are determined, the differences between the prior art and the claims at issue are to be ascertained. Graham v. John Deere Co., 383 U.S. 1, 17-18, 148 USPQ 459, 467 (1966).

and (3) the top seal and the engagement members being pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members.

Christoff's invention relates to the art of reclosable bags, the material for making such bags, and is more particularly concerned with bags of the kind provided with extruded resiliently flexible plastic profiled reclosable separable fastener means. Figures 1-3 show a reclosable bag 20 having a body with a top end 21 and a bottom end 22 and confronting walls 23 and 24. Elongated, extruded resiliently flexible plastic profiled reclosable fastener strip means 27 are secured to the walls 23 and 24 at the top end 21 of the bag body. Any material which will suit the purpose for which the bag 20 is intended may be employed. Thin sheet-form packaging material such as suitable thermoplastic, and if desired gas impervious single layer or laminated extruded film formed from polyethylene, polypropylene, and the like, may be utilized.

In the finished fully sealed bag the interlockable profiles 52 of the reclosable fastener strip means 27 may remain separated as shown in Figure 2 until the top end or mouth of the bag has been opened as shown in Figure 3 for access to contents in the bag, and then the bag can be closed by interengagement of the profiles 52 as shown in Figure 3. Opening of the bag may be effected either by pulling the seal 42 at the top

end of the bag open, or by severing the top end of the bag along a line 58 between the seal 42 and the reclosable fastener 27 and then using the sidewall portions 59 located outwardly from the reclosable fastener strip means 27 as pull flanges for pulling the closed fastener open when desired.

Christoff teaches (column 9, lines 14-40) that

[w]here it is desired to provide a reclosable fastener bag with bag making material such as represented in FIGS. 11 and 12, but further equipped with means for securing a substantially air tight closure, the arrangement shown in FIG. 15 may be employed wherein the bag material is provided adjacent to the separable fastener, or as part of the separable fastener, with a closed cell elastomer sealing rib 80 folded upon itself together with the associated fastener strip 44 and adapted when the fastener profiles 52 are snapped together to press sealingly together substantially as shown. In one preferred form, the close cell elastomer sealing rib 80 may be applied as a coextrusion onto a flange extension 81 along the side of the strip 44 which will be located at the innerside of the bag.

On the other hand, an air sealing arrangement such as shown in FIG. 16 may be provided wherein complementary profiled fastener strips 82 and 83 may be secured to the mouth end portions of a reclosable bag 84 and with closed cell elastomer sealing strips ribs 85 carried by the fastener strips 82 and 83 in a manner to press against one another in the closed fastener condition of the assembly. In this arrangement, the fastener strip 82 may have four profiles, and the fastener strip 83 may carry three complementary fastener profiles, of generally arrow shape as shown, and which interhook with one another in the closed condition of the fastener.

To meet a claim limitation, a prior art reference must disclose that limitation either explicitly or inherently. See In re Schreiber, 128 F.3d 1473, 1477, 44 USPQ2d 1429, 1431 (Fed. Cir. 1997). As stated in In re Oelrich, 666 F.2d 578, 581, 212 USPQ 323, 326 (CCPA 1981) (quoting Hansgirk v. Kemmer, 102 F.2d 212, 214, 40 USPQ 665, 667 (CCPA 1939)) (internal citations omitted):

Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient. If, however, the disclosure is sufficient to show that the natural result flowing from the operation as taught would result in the performance of the questioned function, it seems to be well settled that the disclosure should be regarded as sufficient.

Thus, a prior art reference may meet a claim limitation not expressly found in that reference if the limitation is nonetheless inherent in it. See In re Oelrich, 666 F.2d at 581, 212 USPQ at 326; Verdegaal Bros., Inc. v. Union Oil Co., 814 F.2d 628, 630, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Under the principles of inherency, if the prior art necessarily functions in accordance with, or includes, the claimed limitation is met. See In re King, 801 F.2d 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). However, inherency is not necessarily coterminous with the knowledge of those of ordinary skill in the art. See Mehl/Biophile Int'l Corp. v. Milgraum, 192 F.3d 1362, 1365, 52 USPQ2d 1303, 1305-06 (Fed. Cir. 1999); Atlas Powder Co. v. Ireco Inc., 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1946-47 (Fed. Cir. 1999).

After reviewing the disclosure of Christoff, it is our opinion that Christoff does not disclose a flexible package having the claimed combination of (1) a front wall and a rear wall sealed together at a top seal; (2) first and second engagement members engaged together; and (3) the top seal and the engagement members being pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members. In that regard, the examiner has not established that the above-noted claimed combination is met by Christoff under the principles of inherency. That is, the examiner has not presented sufficient evidence that the reclosable bag of Christoff necessarily has both a top seal and first and second engagement members engaged together wherein both the top seal and the engagement members are pinch-grip openable under a pinch-grip pulling force applied below the engagement members. Absent such evidence, we are constrained to conclude that the examiner's position is based on speculation, probability and/or possibility that Christoff's reclosable bag has both a top seal and first and second engagement members engaged together wherein both the top seal and the engagement members are pinch-grip openable under a pinch-grip pulling force applied below the engagement members.

For the reason set forth above, the subject matter of claims 1 to 12 and 17 to 22 is not suggested by Christoff. Accordingly, the decision of the examiner to reject claims 1 to 12 and 17 to 22 under 35 U.S.C. § 103 is reversed.



We have also reviewed the patent to Thompson additionally applied in the rejection of claims 13 to 16 and 23 to 26 (dependent on claims 1 or 17) but find nothing therein which makes up for the deficiency of Christoff discussed above regarding claims 1 and 17. Accordingly, the decision of the examiner to reject claims 13 to 16 and 23 to 26 under 35 U.S.C. § 103 is reversed.


## CONCLUSION

To summarize, the decision of the examiner to reject claims 1 to 26 under 35 U.S.C. § 103 is reversed.

REVERSED

  
NEAL E. ABRAMS  
Administrative Patent Judge

CHARLES E. FRANKFORT  
Administrative Patent Judge

  
JEFFREY V. NASE  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS  
AND  
INTERFERENCES

Appeal No. 2002-2113  
Application No. 09/372,646

Page 10

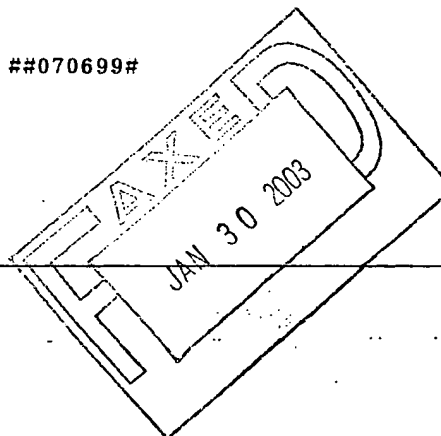
ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

JVN/jg

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\*\*\* TX REPORT \*\*\*  
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CONNECTION TEL		#070699#
CONNECTION ID		
ST. TIME	01/30 12:00	
USAGE T	00'40	
PGS. SENT	2	
RESULT	OK	

**ROTHWELL, FIGG, ERNST & MANBECK**

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Telephone: (202)783-6040  
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**FACSIMILE TRANSMITTAL SHEET**

DATE: 1-30-03

TO: BPAI

1953  
Fax No.: 703-308-1699  
Telephone No. 703-308-9797

FROM: Richard Wydeven  
Bothwell, Figg, Ernst & Manbeck  
OUR REF: 914-1372-8141

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Maria at 202-783-6040.

**ROTHWELL, FIGG, ERNST & MANBECK**

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FACSIMILE TRANSMITTAL SHEET

DATE: 1-30-03

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7453  
Fax No.: 703-308-1699  
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FROM: Richard Wydeven  
Rothwell, Figg, Ernst & Manbeck  
OUR REF: 914-1372-DIV1

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Of

ASSISTANT SECRETARY AND COMMISSIONER OF  
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Washington, D.C. 20231

Copy to RW 1/19/03

Paper No: 23

Rothwell, Figg, Ernst & Manbeck,  
P.C.  
1425 K Street, N.W.  
Suite 800  
Washington, DC 20005

Appeal No:  
Appellant:  
Application No:  
Hearing Room:  
Hearing Docket:  
Hearing Date:  
Hearing Time:  
Location:

2002-2113
Jurgovan, Marc A., et.al
09/372,646
A
B
Tuesday, March 04, 2003
1:00 PM
Room 12C07 CRYSTAL GATEWAY 2 1225 Jefferson Davis Highway Arlington, VA 22202

NOTICE OF HEARING

CONFIRMATION REQUIRED WITHIN TWENTY-ONE DAYS

Your attention is directed to 37 CFR § 1.194(a).

The above identified appeal will be heard by the Board of Patent Appeals and Interferences on the date indicated. Hearings will commence at the time set and as soon as the argument in one appeal is concluded, the succeeding appeal will be taken up.

The time allowed for argument is twenty minutes unless additional time is requested and permitted before the argument is commenced.

CONFIRMATION OR WAIVER OF THE HEARING IS REQUIRED.

This form must be completed below and filed with the Board of Patent Appeals and Interferences preferably by facsimile within TWENTY-ONE (21) DAYS from the mailing date of this notice indicating confirmation or waiver of the hearing. A copy of this form may alternatively be filed by mail if facsimile is not available.

Failure to file this form within this time period will be construed as a waiver of the request for oral hearing.

37 CFR § 1.136(a) does not apply.

By order of the Board of Patent Appeals and Interferences

BPAI HEARINGS FAX No:

(703) 308-6199

See 1108 Off. Gaz. Pat. Trademark

Office 15 (Nov. 14, 1989)

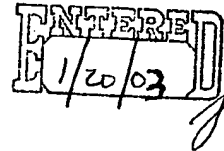
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BOARD OF PATENT APPEALS AND INTERFERENCES

COMMISSIONER OF PATENTS AND TRADEMARKS

WASHINGTON, D.C. 20231

Clerk of the Board (703)-308-9797



In all communications relating to this appeal, please identify the appeal by its number.

CHECK ONE:

☒ HEARING ATTENDANCE CONFIRMED

☐ HEARING ATTENDANCE WAIVED

Signature of Attorney/Agent/Appellant

Date

Registration No.

Jan 30, 2003

39881

JAN 13 2003

RW  
914-1372  
Sub: DI



**UNITED STATES PATENT AND TRADEMARK OFFICE**

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, DC 20231

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ROTHWELL, FIGG, ERNST & MANBECK, P.C.,  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

Paper No: 22

Appeal No: 2002-2113

Appellant: JURGOVAN, MARC A.

Application: 09/372,646

**AUG 23 2002**

PAT. & T.M. OFFICE  
BOARD OF PATENT APPEALS  
AND INTERFERENCES

**Board of Patent Appeals and Interferences  
Docketing Notice**

Application 09/372,646 was received from the Technology Center at the Board on August 7, 2002 and has been assigned Appeal No: 2002-2113.

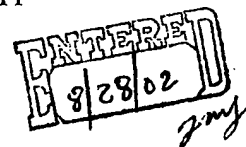
A review of the file indicates that the following documents have been filed by appellant:

Appeal Brief filed on:	August 15, 2002
Reply Brief filed on:	April 16, 2002
Request for Hearing filed on:	April 16, 2002

In all future communications regarding this appeal, please include both the application number and the appeal number.

The mailing address for the Board is:

**BOARD OF PATENT APPEALS AND INTERFERENCES  
UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
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The facsimile number of the Board is 703-308-7952. Because of the heightened security in the Washington D.C. area, facsimile communications are recommended. Telephone inquiries can be made by calling 703-308-9797 and should be directed to a Program and Resource Administrator.

By order of the Board of Patent Appeals and Interferences

**AUG 27 2002**

0914-1372 DI  
pw



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
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Washington, D.C. 20231  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/372,646	08/12/1999	MARC A. JURGOVAN	914-1372DIV1	1694

6449 7590 07/26/2002

ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

EXAMINER

BECKER, DREW E

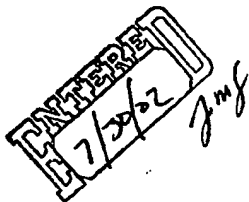
ART UNIT	PAPER NUMBER
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1761

21

DATE MAILED: 07/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



JUL 30 2002

RW  
0914-1372



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Washington, D.C. 20231

72

APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER
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ART UNIT	PAPER
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21

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

Application No. 09 372,646

Art Unit 1761

The reply brief filed April 16, 2002 has been entered and considered. The application has been forwarded to the Board of Patent Appeals and Interferences for decision on the appeal. The Request for Oral Hearing has been noted and the examiner will attend the hearing.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

  
Drew Becker

July 22, 2002



**KEITH HENDRICKS  
PRIMARY EXAMINER**



20 of 29  
THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:

ATTORNEY DOCKET NO. 914-1372DIV1 SERIAL/PATENT NO. 09/372,646  
ATTORNEY/TYPIST INITIALS RW:maf FILED/ISSUED August 12, 1999  
DUE DATE \_\_\_\_\_ APPLICANT/PATENTEE Marc JURGOVAN et al.

DOCUMENTS ATTACHED:

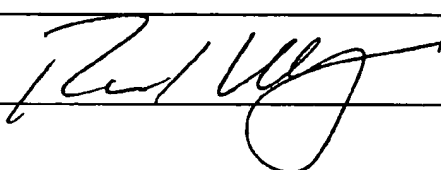
PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. 1.136(b), REQUEST FOR  
ORAL HEARING, and REPLY TO EXAMINER'S ANSWER, with Fee Transmittal  
Sheet, Transmittal Form



<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Complete if Known	
	Application Number	09/372,646
	Filing Date	August 12, 1999
	First Named Inventor	Marc A. JURGOVAN et al.
	Group Art Unit	1761
	Examiner Name	D. Becker
Total Number of Pages in This Submission	Attorney Docket Number	914-1372DIV1
ENCLOSURES (check all that apply)		

- |  |   |  |
|--|---|--|
| <input checked="" type="checkbox"/> Fee Transmittal Form                     | <input type="checkbox"/> Assignment Papers  | <input type="checkbox"/> After Allowance Communication to Group                            |
| <input type="checkbox"/> Fee Attached  | <input type="checkbox"/> Drawing(s)   | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences        |
| <input checked="" type="checkbox"/> Amendment/Reply                          | <input type="checkbox"/> Licensing-related Papers                                       | <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition   | <input type="checkbox"/> Proprietary Information   |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Petition to Convert to a Provisional Application               | <input type="checkbox"/> Status Letter   |
| <input checked="" type="checkbox"/> Extension of Time Request                | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):            |
| <input type="checkbox"/> Express Abandonment Request                         | <input type="checkbox"/> Terminal Disclaimer  | <i>Request For Oral Hearing</i>  |
| <input type="checkbox"/> Information Disclosure Statement                    | <input type="checkbox"/> Request for Refund   |  |
| <input type="checkbox"/> Certified Copy of Priority Document(s)              | <input type="checkbox"/> CD, Number of CD(s)  |  |
| <input type="checkbox"/> Response to Missing Parts/ Incomplete Application   |   |  |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 |   |  |

REMARKS:

SUBMITTED BY		Complete (if applicable)			
NAME AND REG. NUMBER	Richard Wydeven, Reg. No. 39,881				
SIGNATURE		DATE	April 16, 2002	DEPOSIT ACCOUNT USER ID	02-2135

<b>FEE TRANSMITTAL for FY 2001 (Large Entity)</b>		Complete if Known	
		Application Number	09/372,646
		Filing Date	August 12, 1999
		First Named Inventor	Marc A. JURGOVAN et al.
		Group Art Unit	1761
Examiner Name		D. Becker	
Total Amount of Payment	(\$)	Attorney Docket Number	914-1372DIV1

**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge additional fees and credit any overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Flgg, Ernst & Manbeck

☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17

☐ Applicant claims small entity status

2. ☐ Payment Enclosed

☐ Check

☐ Credit Card

**FEE CALCULATION**
**1. FILING FEE**

Code	Fee	Fee Description	Fee Paid
101	740	Utility filing fee	[ ]
106	330	Design Filing Fee	[ ]
107	510	Plant Filing Fee	[ ]
108	740	Reissue Filing Fee	[ ]
114	160	Provisional Filing Fee	[ ]

**SUBTOTAL \$**

**2. CLAIMS**

Paid	Extra Claims	Fee	Fee
Total Claims	[ ] - 20** = [ ] x	\$18 = [ ]	
Independent Claims	[ ] - 3** = [ ] x	84 = [ ]	
Multiple Dependent Claims	+ 280 = [ ]		

\*\*or number previously paid, if greater;

**SUBTOTAL \$**

**FEE CALCULATION (continued)**
**3. ADDITIONAL FEES**

Code	Fee	Fee Description	Fee Paid
105	130	Surcharge - late filing fee or oath	[ ]
127	50	Surcharge - late provisional filing fee or cover sheet	[ ]
139	130	Non-English specification	[ ]
147	2,520	For filing a request for reexamination	[ ]
112	920	Requesting publication of SIR prior to Examiner action	[ ]
113	1,840*	Requesting publication of SIR after Examiner action	[ ]
115	110	Extension for reply within first month	[ ]
116	400	Extension for reply within second month	[ ]
117	920	Extension for reply within third month	[ ]
118	1,440	Extension for reply within fourth month	[ ]
128	1,960	Extension for reply within fifth month	[ ]
119	320	Notice of Appeal	[ ]
120	320	Filing a brief in support of an appeal	[ ]
121	280	Request for Oral Hearing	[280.00]
138	1,510	Petition to institute a public use proceeding	[ ]
140	110	Petition to revive -unavoidable	[ ]
141	1,280	Petition to revive - unintentional	[ ]
142	1,280	Utility issue fee (or reissue)	[ ]
143	460	Design issue fee	[ ]
144	620	Plant issue fee	[ ]
122	130	Petitions to the Commissioner	[ ]
123	50	Processing fee under 37 CFR 1.17(q)	[ ]
126	180	Submission of Information Disclosure Statement	[ ]
581	40	Recording each patent assignment per property (times number of properties)	[ ]
146	740	Filing a submission after final rejection (37 CFR 1.129(a))	[ ]
149	740	For each additional invention to be examined (37 CFR 1.129(b))	[ ]
179	740	Request for Continued Examination (RCE)	[ ]
169	900	Request for expedited examination of a design application	[ ]
195	300	Publication fee for early, voluntary, or normal publication	[ ]
196	300	Publication fee for republication	[ ]
089	200	Filing application for patent term adjustment	[ ]
090	400	Request for reinstatement of term reduced	[ ]
Other fee (specify)			[ ]

\* Reduced by Basic Filing Fee Paid

**SUBTOTAL**

**\$280.00**

SUBMITTED BY		Complete (if applicable)	
NAME AND REG. NUMBER	Richard Wydeven, Reg. No. 39,881		
SIGNATURE	DATE	DEPOSIT ACCOUNT USER ID	02-2135

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<p style="text-align: center;"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<i>Title of the Invention:</i> <b>FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</b>		

**PETITION FOR EXTENSION OF TIME UNDER 37 C.F.R. 1.136(b)**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Applicants hereby petition under 37 C.F.R. §1.136(b) for an extension of time to file a Reply to the Examiner's Answer of October 19, 2001. It is urged that there is sufficient cause for the requested extension and the time request is reasonable as explained below.

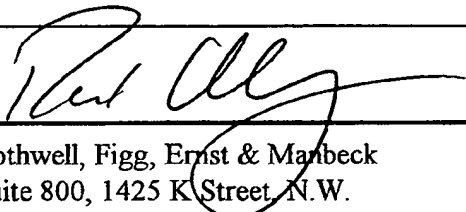
The Examiner's Answer was mailed on October 19, 2001. Applicants did not receive the Answer until January 18, 2002, well after the original two-month deadline of December 19, 2001 for submitting a reply had passed. On January 29, 2002 Applicants filed a Petition to Reset the Period for Reply due to late receipt of the Office Action. At the time of filing the Petition to Restart, Applicants' representative did not know whether or not the petition would be granted. Section 710.06 of the MPEP states that "the Office will grant a petition to restart the previously set period for reply to an Office Action to run from the date of receipt of the Office Action at the correspondence address when the following criteria are met." Section 710.06 also states "[w]here an Office Action was received with less than two months remaining in a shortened statutory period of three months the reply may be started from the date of receipt." The MPEP's use of the terms "will" and "may" makes it unclear as to whether or not the period for reply will be automatically granted or, if granted, from what date the period will be reset.

On March 14, 2002 the Office mailed its Decision on Petition granting the Petition to Reset A Period for Reply. The period was reset to the date of receipt of the Examiner's Answer, namely January 18, 2002. Accordingly, as of March 14, 2002 there were only four days left in the response

period. Applicants did not actually receive the Decision on Petition until March 20, 2002, two days after the period for reply had expired.

Accordingly, it is respectfully submitted that sufficient cause for the requested extension exists. And the requested extension is reasonable, being less than one month.

If it is deemed that the circumstances for which Applicants seek an extension of time do not fall within the provisions of 37 C.F.R. 1.136(b), kindly consider this communication a petition under 37 C.F.R. §1.183 to suspend the rule requiring that a Reply to an Examiner's Answer be filed within two months of the mailing date of the Answer. The Commissioner is hereby authorized to charge the petition fee set forth in 37 C.F.R. §1.17(h) from deposit account number 02-2135. A duplicate copy of this petition is enclosed for that purpose.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	April 16, 2002
Address	Rothwell, Figg, Ernst & Manbeck Suite 800, 1425 K Street, N.W.				
City	Washington	State	D.C.	Zip Code	20005
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031

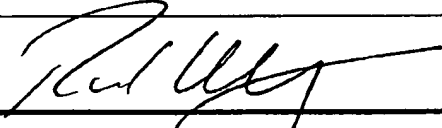
<p align="center"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<p><i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</p>		

**REQUEST FOR ORAL HEARING**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

We request an oral hearing in the above-identified case. Enclosed is the required fee of \$280.

<b>RESPECTFULLY SUBMITTED,</b>					
<i>NAME AND REG. NUMBER</i>	Richard Wydeven, Registration No. 39,881				
<i>SIGNATURE</i>			<i>DATE</i>	April 16, 2002	
<i>Address</i>	Rothwell, Figg, Ernst & Manbeck Suite 800, 1425 K Street, N.W.				
<i>City</i>	Washington	<i>State</i>	D.C.	<i>Zip Code</i>	20005
<i>Country</i>	U.S.A.	<i>Telephone</i>	202-783-6040	<i>Fax</i>	202-783-6031

I:\DATA\Clients\0914\914-1372-dv1.oh

<p style="text-align: center;"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<p><i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</p>		

**REPLY TO EXAMINER'S ANSWER**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Applicants disagree with the contention that Christoff '683 is capable of functioning as the claimed invention. This is mere speculation based on a hindsight reconstruction using the Applicants' disclosure. There is no teaching or suggestion, and no evidence has been proffered, that the package disclosed in Christoff '683 is capable of functioning as the package recited in the present application.

It is also suggested in the Answer that the claims of the present application lack structural features which accomplish the claimed functionality. The Applicants respectfully disagree. Achieving the claimed functionality of a package that is pinch-grip openable from below the zipper and seal location depends on a complex interplay of a number of structural aspects of the package including the shape of the engagement members the material of which the engagement members are constructed, the manner of securing the engagement members to the walls of the package, the construction of the walls of the package, etc. Preferred examples of each of these structural aspects are described in the specification. Deviation from a preferred designed feature may well cause each of the other design features to be changed in order to maintain the desired functionality of the package. The phrase "being pinch-grip operable..." in claim 1 and the phrase "being openable by de-lamination ... upon the application of a pre-determined pinch-grip pulling force..." in claim 17 necessarily include this complex interplay of structural features.

In the specification, it is described that the force required to open the zipper from inside the package is preferably reduced, preferably about equal to or less than, the force required to open the zipper from outside the package. (See page 14, lines 1-4.) Furthermore, the specification describes that "after the zipper is at least partially disengaged, the force required to continue disengagement of the engagement members is minimal or is greatly reduced. The maximum force required during the entire pinch-grip opening step can thus be minimized, if desired, since the peak of the force required to open the zipper can precede that required to open the top seal during pinch-gripping." (See page 14, lines 11-17).

It is also suggested in the Examiner's Answer that the feature upon which Appellants rely "i.e., the top seal and zipper open simultaneously by a single force" are not recited in the rejected claims. The Applicants respectfully disagree. Claim 1 recites a package having front and rear walls sealed together at a top seal and first and second zipper parts having first and second engagement members, respectively, that are engaged together, wherein the top seal is manually pinch-openable and said first and second engagement members are manually pinch-openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members. Obviously, if the package includes a top seal and inter-engaged engagement members and both are openable under a pinch-grip pulling force, they would have to be openable substantially simultaneously. Similarly, claim 17 recites a package having a top seal and a first engagement member engaged with a second engagement member and wherein the seal may be opened and the engagement may be disengaged upon application of a pinch-grip pulling force applied to the front and rear walls below the zipper. The seal and engagement members would have to open substantially simultaneously.

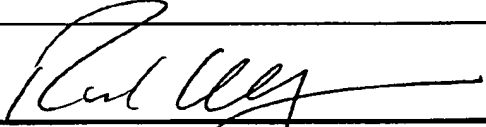
The Applicants also disagree with the statement in the Examiner's Answer that the claims do not specify where the pinch-grip openable force is to be applied. Both of independent claims 1 and 17 clearly indicate that the force is applied to the front and rear walls below the zipper.

Finally, Applicants disagree with the statement in the Examiner's Answer that the disclosure in Christoff '683 that the bag may be opened by pulling the seal 42 at the top of the bag open (column 6, line 35) necessarily implies de-lamination of the bag walls. Christoff '683 merely discloses that the bag may be formed of a laminated material but does not describe that the opening is effected by de-lamination. Inferring that Christoff '683 discloses opening by de-lamination simply



because the bag may be made from a laminated material is a hindsight reconstruction of the present claims.

For the foregoing reasons and the reasons set forth in Applicants' Appeal Brief, it is respectfully urged that the rejections be reversed.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	April 16, 2002
Address	Rothwell, Figg, Ernst & Manbeck Suite 800, 1425 K Street, N.W.				
City	Washington	State	D.C.	Zip Code	20005
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/372,646	08/12/1999	MARC A. JURGOVAN	914-1372DIV1	1694

6449 7590 03/14/2002

ROTHWELL, FIGG, ERNST & MANBECK, P.C.  
1425 K STREET, N.W.  
SUITE 800  
WASHINGTON, DC 20005

EXAMINER

BECKER, DREW E

ART UNIT

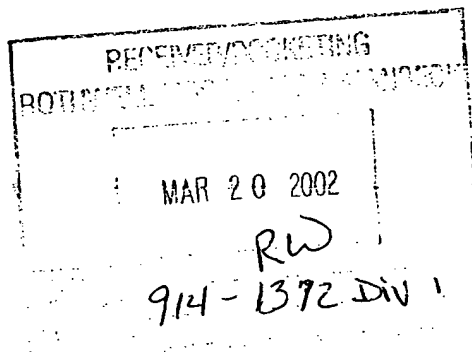
PAPER NUMBER

1761

17

DATE MAILED: 03/14/2002

Please find below and/or attached an Office communication concerning this application or proceeding.





UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

In re Application of :  
Marc A. Jurgovan et al. : DECISION ON  
Application No. 09/372,646 : PETITION  
Filing date: 08/12/99 :

This is in response to the petition to restart or reset the period of reply to the Office action, mailed on 10/19/01.

The petition is granted.

The period for reply to the prior Office action is reset to run from 01/18/02, the date that applicant received the delayed correspondence.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 308-3959.

A handwritten signature in cursive script, appearing to read "Milton I. Cano".

Milton I. Cano  
Supervisory Patent Examiner  
Art Unit 1761/Technology Center 1700



THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:

ATTORNEY DOCKET NO.	<u>914-1372DIV1</u>	SERIAL/PATENT NO.	<u>09/372,646</u>
ATTORNEY/TYPIST INITIALS	<u>RW:maf</u>	FILED/ISSUED	<u>August 12, 1999</u>
DUE DATE	<u>01/29/02</u>	APPLICANT/PATENTEE	<u>Marc JURGOVAN et al.</u>

**DOCUMENTS ATTACHED:**

1. Transmittal Form
2. Petition To Reset A Period For Reply Due To Late Receipt Of An Office Action
3. Office Action received from the PTO
4. Log Sheet of incoming PTO mail
5. Declaration of Docket Coordinator

TAB 1



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646 08/12/99 JURGOVAN

N 914-1372DIV1

IM52/1019

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

EXAMINER

BECKER, D

ART-UNIT

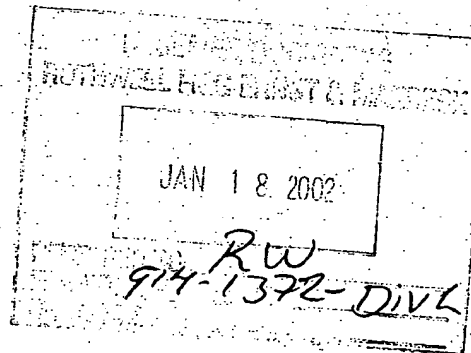
PAPER NUMBER

1761

DATE MAILED:

10/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.



Commissioner of Patents and Trademarks



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 15

Application Number: 09/372,646  
Filing Date: August 12, 1999  
Appellant(s): JURGOVAN ET AL.

Richard Wydeven  
For Appellant

EXAMINER'S ANSWER

**MAILED**

OCT 19 2001

**GROUP 1700**

This is in response to appellants' brief on appeal filed August 15, 2001.

**(1) Real Party in Interest**

A statement identifying the real party in interest is contained in the brief.

**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-16 stand or fall together while claims 17-26 also stand or fall together, and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).



**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

<b>4,617,683</b>	<b>Christoff</b>	<b>10-1986</b>
<b>5,224,779</b>	<b>Thompson et al</b>	<b>7-1993</b>

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), walls of laminate materials (column 4, lines 4-23), a

Art Unit: 1761

bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Christoff also teaches the use of known zipper configurations such as the rib and groove zipper exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff). Christoff does not specifically recite the use of potato chips as the packaged product, nor the top seal being a heat seal. It would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and also teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64), sealing the ends with sealing bars similar to the ones used to seal the fin (Figure 5, 35 & 39), and since heat seals were commonly used in the art for end seals as well. Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 and "pinch-grip pulling force applied to each of said front and rear walls below said zipper" in claim 17 are preferred methods of using the claimed package and therefore are not given patentable weight, in so much as the claimed package is capable of functioning and responding to such force.

3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not recite specific opening forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper as instantly claimed. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers, since Christoff is silent as to opening force required, and since Thompson et al teach that this was a common range of opening force for food packages consumed by the public (column 3, line 4).

**(11) *Response to Argument***

Appellants argue that Christoff does not teach "a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together". However, Figure 3 of Christoff clearly shows this limitation.

Appellants argue that Christoff does not teach opening the package by gripping it below the zipper. As previously mentioned above, this is merely a preferred method of opening the claimed package. The Christoff package was capable of functioning as claimed, and thus the claims are not patentably distinguished from the prior art. Appellants also argue that this "represents a limitation defining structural features", yet

do not specify or explain what supposed "structural features" are meant to be conveyed. No such distinguishing features, patentable or otherwise, are noted.

In response to appellants' argument that the references fail to show certain features of appellants' invention, it is noted that the features upon which appellants rely (i.e., the top seal and zipper opened simultaneously by a single force) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It should also be noted that the product claims only recite an intended method of use by opening the zipper with a "pinch-grip opening force applied to said front and rear walls below said engagement members", and that the top seal is only required to be "manually pinch-grip openable" without specifying where this force is applied. It is submitted that these have been met by the structure of Christoff.

Appellant argues that Christoff does not teach "delamination" as a means to open the package. However, Christoff clearly teaches opening the package by delamination when it is stated that "Opening of the bag may be effected... by pulling the seal 42 at the top of the bag open" (column 6, line 35). Delamination is simply the act of separating layers, which in this case, was met by the opening of the sealed package.

Application/Control Number: 09/372,646  
Art Unit: 1761

Page 7

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Drew Becker  
October 18, 2001

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON, DC 20004

  
KEITH HENDRICKS  
PRIMARY EXAMINER

  
GREGORY MILLS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700  
*Appeal Conference*

<b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b>	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<i>Title of the Invention:</i> <b>FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</b>		

**PETITION TO RESET A PERIOD FOR REPLY  
DUE TO LATE RECEIPT OF AN OFFICE ACTION**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In accordance with the provisions of MPEP 710.06, Applicant petitions the Office to restart the period for reply to the Examiner's Answer mailed October 19, 2001 in connection with the subject application. As grounds for this petition, the following criteria are listed as required by 710.06:

(A) this petition is being filed within two weeks of January 18, 2002, the date of receipt of the Examiner's Answer at the correspondence address;

(B) a substantial portion of the set reply period had elapsed on the date of receipt, i.e., at least one month of the two-month reply period; and

(C) (1) a copy of the Office Communication having the date of receipt of the Office Action at the correspondence address stamped thereon is attached at Tab 1;

(2) the Examiner's Answer was received at the correspondence address on January 18, 2002, as shown by the date stamp on the copy of the Communication at Tab 1. It is the procedure of this office to date-stamp all mail received from the U.S. Patent and Trademark Office with the current date on the day that it is received from the U.S. Postal Service. All U.S. Patent and Trademark Office mail is also logged into a computer program which shows, among other items, the date of receipt in our office. A copy of a portion of the log showing receipt of the Office Communication at the correspondence address on January 18, 2002, is attached at Tab 2. A declaration averring to these procedures by the firm's Docket Coordinator is attached at Tab 3.

FIRST NAMED INVENTOR Marc A. Jurgovan		SIGNATURE <i>Marc A. Jurgovan</i>	DATE 5/14/98
RESIDENCE PLANO, TEXAS		CITIZENSHIP U.S.A.	
POST OFFICE ADDRESS 2501 SCHOONER DRIVE / PLANO, TEXAS 75074			
SECOND NAMED INVENTOR Martin B. Dierl		SIGNATURE <i>Martin B. Dierl</i>	DATE 5/14/98
RESIDENCE ALLEN, TEXAS		CITIZENSHIP U.S.A.	
POST OFFICE ADDRESS 1414 QUANAH COURT / ALLEN, TEXAS 75013			

0914-1372

SBP:vpb

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
 )  
Marc A. JURGOVAN et al. )  
 )  
Serial No. Divisional of ) Examiner: (To be assigned)  
Serial No. 09/079,382 )  
 )  
Filed: Herewith ) Group Art Unit: Not yet  
 ) assigned  
 )  
For: FLEXIBLE PACKAGE HAVING )  
A RE-CLOSABLE ZIPPER )

INFORMATION DISCLOSURE STATEMENT

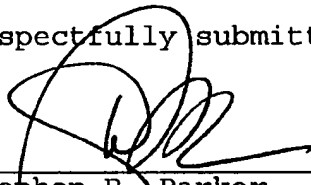
Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Under the provisions of 37 C.F.R. §§ 1.56, 1.97 and 1.98,  
Applicant submits herewith Form PTO-1449 listing publications  
that the Office may wish to consider in examination of the  
subject application.

Respectfully submitted,

By

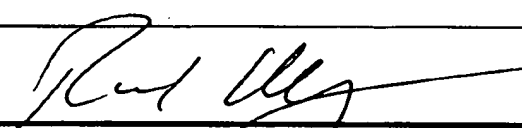
  
\_\_\_\_\_  
Stephen B. Parker  
Attorney for Applicants  
Registration No. 36,631  
ROTHWELL, FIGG, ERNST & KURZ, p.c.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040



Form 1449		U.S. Department of Commerce Patent and Trademark Office				ATTY. DOCKET NO. 0914-1372div1		SERIAL NO.							
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)						APPLICANT Marc A. Jurgovan et al.									
						FILING DATE Herewith		GROUP							
U.S. PATENT DOCUMENTS															
EXAMINER INITIAL		DOCUMENT NUMBER							DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE		
	AA	3	1	7	2	4	4	3	03/09/65	S. Ausnit					
	AB	4	6	1	7	6	8	3	10/14/86	Christoff					
	AC	4	6	5	5	8	6	2	04/07/87	Christoff et al.					
	AD	4	6	9	1	3	7	2	09/01/87	Van Erden					
	AE	4	7	0	9	3	9	8	11/24/87	Ausnit					
	AF	4	7	8	2	9	5	1	11/08/88	Griesbach et al.					
	AG	4	9	0	9	0	1	7	03/20/90	McMahon et al.					
	AH	4	9	2	5	3	1	6	05/15/90	Van Erden et al.					
	AI	4	9	7	6	8	1	1	12/11/90	Siebert					
	AJ	5	0	6	7	8	2	2	11/26/91	Wirth et al.					
	AK	5	2	2	4	7	7	9	07/06/93	Thompson et al.					
FOREIGN PATENT DOCUMENTS															
		DOCUMENT NUMBER							DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES NO		
	AL														
	AM														
	AN														
	AO														
	AP														
NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)															
	AR														
	AS														
	AT														
EXAMINER										DATE CONSIDERED					
EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.															

Form 1449		U.S. Department of Commerce Patent and Trademark Office		ATTY. DOCKET NO. 0914-1372div1		SERIAL NO.								
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)				APPLICANT Marc A. Jurgovan et al.										
				FILING DATE Herewith		GROUP								
U.S. PATENT DOCUMENTS														
EXAMINER INITIAL		DOCUMENT NUMBER							DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
	BA	5	2	4	2	5	1	6	09/07/93	Custer et al.				
	BB	5	3	3	0	2	6	9	07/19/94	Kamada et al.				
	BC	5	5	5	7	9	0	7	09/24/96	Malin et al.				
	BD	5	5	5	8	6	1	3	09/24/96	Tilman et al.				
	BE	5	5	9	2	8	0	2	01/14/97	Malin et al.				
	BF	5	6	8	9	9	3	5	11/25/97	Derkach et al.				
	BG	5	7	4	9	6	5	8	05/12/98	Kettner				
	BH													
	BI													
	BJ													
	BK													
FOREIGN PATENT DOCUMENTS														
		DOCUMENT NUMBER							DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION	
													YES	NO
	BL													
	BM													
	BN													
	BO													
	BP													
NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)														
	BR													
	BS													
	BT													
EXAMINER										DATE CONSIDERED				
EXAMINER: Initial if reference considered, whether or not citation is in conformation with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.														

For the foregoing reasons, it is respectfully requested that the time for reply to the Office Action mailed October 19, 2001, be reset and that Applicant be informed of the new date for response as promptly as possible.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	January 29, 2002
Address	Rothwell, Figg, Ernst & Manbeck Suite 701-East, 555 13th Street, N.W.				
City	Washington	State	D.C.	Zip Code	20004
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031

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# Mail Report - Today's Mail

Sender/Client	Rec Date	Corr Date	Mail Type	From/Alt	Document Type	Orig. Rpted	Date Stamp	Entered By
29511 PTO W00914-1372-DIV-1- Status: LOGGED	1/18/02	10/19/01	PTO MAIL-	RW Courier Name:	EXAMINER'S ANSWER		1/18/02	COALV
29512 PTO N01205-0004 Status: LOGGED	1/18/02	1/14/02	PTO MAIL-	RJJ Courier Name:	DECISION ON		1/18/02	COALV
29513 PTO W01954-0344-PCT--- Status: LOGGED	1/18/02	1/10/02	PTO MAIL-	EAF Courier Name:	PCT		1/18/02	COALV
29514 PTO W01954-0310-PCT--- Status: LOGGED	1/18/02	1/14/02	PTO MAIL-	EAF Courier Name:	PCT		1/18/02	COALV
29515 PTO W01954-0310-PCT--- Status: LOGGED	1/18/02	1/11/02	PTO MAIL-	EAF Courier Name:	PCT		1/18/02	COALV
29516 PTO W02318-0190 Status: LOGGED	1/18/02	1/11/02	PTO MAIL-	JLI Courier Name:	AA ADVISORY		1/18/02	COALV
29517 PTO W01547-0177 Status: LOGGED	1/18/02	12/17/01	PTO MAIL-	GFR Courier Name:	TTAB MAIL		1/18/02	COALV
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29522 PTO W01751-0275 Status: LOGGED	1/18/02	1/15/02	PTO MAIL-	GFR Courier Name:	OA NON-FINAL OA		1/18/02	COALV
29523 PTO N01206-0326 Status: LOGGED	1/18/02	1/15/02	PTO MAIL-	RJJ Courier Name:	OA NON-FINAL OA		1/18/02	COALV
29524 PTO N01206-0449 Status: LOGGED	1/18/02	1/15/02	PTO MAIL-	RJJ Courier Name:	OA NON-FINAL OA		1/18/02	COALV

<p style="text-align: center;"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application No.</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket No.</i>	914-1372DIV1
<p><i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</p>		

**DECLARATION OF CECELIA BELL-GIBSON**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

I, Cecelia Bell-Gibson, declare as follows:

I am of legal age and have the mental capacity to make this declaration;

I am the Docket Coordinator for the firm of Rothwell, Figg, Ernst & Manbeck, P.C., and have held this position for approximately one year;

As Docket Coordinator, it is part of my responsibilities to ensure that incoming mail is processed according to office procedure;

The procedure of this office for processing incoming mail includes date-stamping all U.S. Patent and Trademark Office mail with the current date on the date that it is received in our office; further, all such mail is logged into a computer database listing, among other things, the date of receipt of such mail in our office.

I further declare that all statements made herein of my own knowledge are true and all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Cecelia Bell-Gibson				
SIGNATURE	Cecelia Bell-Gibson			DATE	January 29, 2002
Address	Rothwell, Figg, Ernst & Manbeck Suite 701-East, 555 13th Street, N.W.				
City	Washington	State	D.C.	Zip Code	20004
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031

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**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

*informed about 10/19/01*  
*1/6/02*  
*mg*  
*data*

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646    08/12/99    JURGOVAN    M    914-1372DIV1

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

IM52/1019

EXAMINER

BECKER, D

ART UNIT

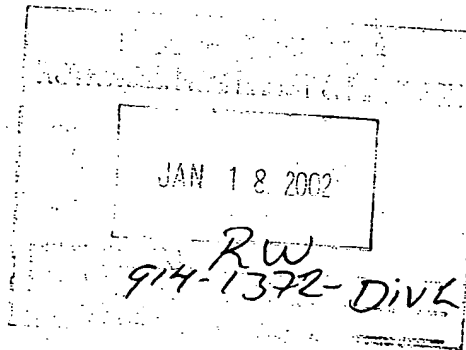
PAPER NUMBER

1761

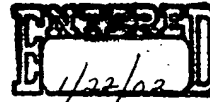
DATE MAILED:

10/19/01

Please find below and/or attached an Office communication concerning this application or proceeding.



Commissioner of Patents and Trademarks



*D.W.*



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20230  
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Paper No. 15

Application Number: 09/372,646  
Filing Date: August 12, 1999  
Appellant(s): JURGOVAN ET AL.

Richard Wydeven  
For Appellant

EXAMINER'S ANSWER

**MAILED**

OCT 19 2001

**GROUP 1700**

This is in response to appellants' brief on appeal filed August 15, 2001.

**(1) *Real Party in Interest***

A statement identifying the real party in interest is contained in the brief.



**(2) *Related Appeals and Interferences***

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

**(3) *Status of Claims***

The statement of the status of the claims contained in the brief is correct.

**(4) *Status of Amendments After Final***

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) *Summary of Invention***

The summary of invention contained in the brief is correct.

**(6) *Issues***

The appellant's statement of the issues in the brief is correct.

**(7) *Grouping of Claims***

Appellant's brief includes a statement that claims 1-16 stand or fall together while claims 17-26 also stand or fall together, and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

**(8) Claims Appealed**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(9) Prior Art of Record**

<b>4,617,683</b>	<b>Christoff</b>	<b>10-1986</b>
<b>5,224,779</b>	<b>Thompson et al</b>	<b>7-1993</b>

**(10) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

**Claim Rejections - 35 USC § 103**

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), walls of laminate materials (column 4, lines 4-23), a

Art Unit: 1761

bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Christoff also teaches the use of known zipper configurations such as the rib and groove zipper exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff). Christoff does not specifically recite the use of potato chips as the packaged product, nor the top seal being a heat seal. It would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and also teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64), sealing the ends with sealing bars similar to the ones used to seal the fin (Figure 5, 35 & 39), and since heat seals were commonly used in the art for end seals as well. Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 and "pinch-grip pulling force applied to each of said front and rear walls below said zipper" in claim 17 are preferred methods of using the claimed package and therefore are not given patentable weight, in so much as the claimed package is capable of functioning and responding to such force.

3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not recite specific opening forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper as instantly claimed. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers, since Christoff is silent as to opening force required, and since Thompson et al teach that this was a common range of opening force for food packages consumed by the public (column 3, line 4).

**(11) Response to Argument**

Appellants argue that Christoff does not teach "a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together". However, Figure 3 of Christoff clearly shows this limitation.

Appellants argue that Christoff does not teach opening the package by gripping it below the zipper. As previously mentioned above, this is merely a preferred method of opening the claimed package. The Christoff package was capable of functioning as claimed, and thus the claims are not patentably distinguished from the prior art. Appellants also argue that this "represents a limitation defining structural features", yet

Art Unit: 1761

do not specify or explain what supposed "structural features" are meant to be conveyed.

No such distinguishing features, patentable or otherwise, are noted.

In response to appellants' argument that the references fail to show certain features of appellants' invention, it is noted that the features upon which appellants rely (i.e., the top seal and zipper opened simultaneously by a single force) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). It should also be noted that the product claims only recite an intended method of use by opening the zipper with a "pinch-grip opening force applied to said front and rear walls below said engagement members", and that the top seal is only required to be "manually pinch-grip openable" without specifying where this force is applied. It is submitted that these have been met by the structure of Christoff.

Appellant argues that Christoff does not teach "delamination" as a means to open the package. However, Christoff clearly teaches opening the package by delamination when it is stated that "Opening of the bag may be effected... by pulling the seal 42 at the top of the bag open" (column 6, line 35). Delamination is simply the act of separating layers, which in this case, was met by the opening of the sealed package.

Application/Control Number: 09/372,646  
Art Unit: 1761

Page 7


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Drew Becker  
October 18, 2001

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON, DC 20004

  
KEITH HENDRICKS  
PRIMARY EXAMINER

  
GREGORY MILLS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700  
*Appeal Confere*

**BOX AF**

**THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:**

ATTORNEY DOCKET NO. 914-1372DIV1 SERIAL/PATENT NO. 09/372,646  
ATTORNEY/TYPIST INITIALS BGN:RW:slm FILED/ISSUED August 12, 1999  
DUE DATE 08/15/01 APPLICANT/PATENTEE Marc A. JURGOVAN et al.

**DOCUMENTS ATTACHED:**

1. Transmittal Form
2. Fee Transmittal w/Check No. 24112 in the amount of \$310.00
3. Transmittal of Appeal Brief
4. Appeal Brief (*in triplicate*)



**BOX AF**

THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:

ATTORNEY DOCKET NO. 914-1372DIV1 SERIAL/PATENT NO. 09/372,646  
ATTORNEY/TYPIST INITIALS BGN:RW:slm FILED/ISSUED August 12, 1999  
DUE DATE 08/15/01 APPLICANT/PATENTEE Marc A. JURGOVAN et al.

**DOCUMENTS ATTACHED:**

1. Transmittal Form
2. Fee Transmittal w/Check No. 24112 in the amount of \$310.00
3. Transmittal of Appeal Brief
4. Appeal Brief (*in triplicate*)

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

INVOICE	DATE	DESCRIPTION	NET
	08/15/2001	0914-1372 SMCD #24112 Appeal Brief	310.00

24112

Date 08/15/2001 **COMMISSIONER OF PATENTS & TRADEMARKS**

\$310.00

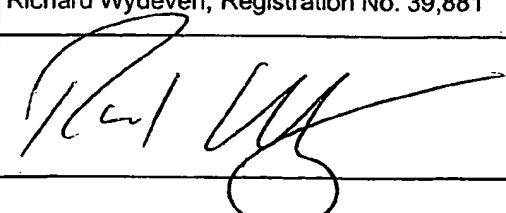


**BOX AF****TRANSMITTAL FORM***(to be used for all correspondence after initial filing)**Complete if Known*

Application Number	09/372,646
Filing Date	August 12, 1999
First Named Inventor	Marc A. JURGOVAN et al.
Examiner Name	D. Becker
Group Art Unit	1761
Attorney Docket Number	914-1372DIV1

Total Number of Pages in This Submission **17****ENCLOSURES (check all that apply)**

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form                     | <input type="checkbox"/> Assignment Papers  | <input type="checkbox"/> After Allowance Communication to Group                                       |
| <input checked="" type="checkbox"/> Fee Attached                             | <input type="checkbox"/> Drawing(s)   | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences                   |
| <input type="checkbox"/> Amendment/Reply                                     | <input type="checkbox"/> Licensing-related Papers                                       | <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition   | <input type="checkbox"/> Proprietary Information  |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Petition to Convert to a Provisional Application               | <input type="checkbox"/> Status Letter  |
| <input type="checkbox"/> Extension of Time Request                           | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below):                       |
| <input type="checkbox"/> Express Abandonment Request                         | <input type="checkbox"/> Terminal Disclaimer  | <b>Transmittal of Appeal Brief</b>  |
| <input type="checkbox"/> Information Disclosure Statement                    | <input type="checkbox"/> Request for Refund   |   |
| <input type="checkbox"/> Certified Copy of Priority Document(s)              | <input type="checkbox"/> CD, Number of CD(s)  |   |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application    | <b>REMARKS:</b>   |   |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 |   |   |

SUBMITTED BY:		Complete (if applicable)			
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE		DATE	8/15/01	DEPOSIT ACCOUNT USER ID	02-2135

<b>FEE TRANSMITTAL for FY 2001</b>  <b>(Large Entity)</b>		Complete if Known		
		Application Number	09/372,646	
		Filing Date	August 12, 1999	
		First Named Inventor	Marc A. JURGOVAN et al.	
		Group Art Unit	1761	
		Examiner Name	D. Becker	
Total Amount of Payment	(\$)	310.00	Attorney Docket Number	914-1372DIV1

**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge additional fees and credit any overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Figg, Ernst & Manbeck
- ☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17
- ☐ Applicant claims small entity status
2. ☒ Payment Enclosed:
- ☒ Check
- ☐ Credit Card

**FEE CALCULATION**
**1. FILING FEE**

Fee Code	Fee Paid	Fee Description	Fee Paid
101	710	Utility Filing Fee	[ ]
106	320	Design Filing Fee	[ ]
107	490	Plant Filing Fee	[ ]
108	710	Reissue Filing Fee	[ ]
114	150	Provisional Filing Fee	[ ]

**SUBTOTAL \$ 0.00**

**2. CLAIMS**

	Extra Claims	Fee	Fee Paid
Total Claims	- 20" =	x \$ 18.00 =	[ ]
Independent Claims	- 3" =	x \$ 80.00 =	[ ]
Multiple Dependent Claims		+ \$ 270.00	[ ]

" or number previously paid, if greater;

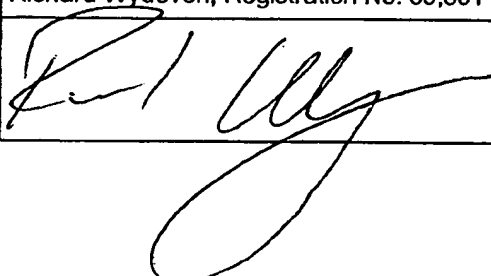
**SUBTOTAL \$ 0.00**

**FEE CALCULATION (continued)**
**3. ADDITIONAL FEES**

Fee Code	Fee Paid	Fee Description	Fee Paid
105	130	Surcharge - late filing fee or oath	[ ]
127	50	Surcharge - late provisional filing fee or cover sheet	[ ]
139	130	Non-English specification	[ ]
147	2,520	For filing a request for reexamination	[ ]
112	920	Requesting publication of SIR prior to Examiner action	[ ]
113	1,840*	Requesting publication of SIR after Examiner action	[ ]
115	110	Extension for reply within first month	[ ]
116	390	Extension for reply within second month	[ ]
117	890	Extension for reply within third month	[ ]
118	1,390	Extension for reply within fourth month	[ ]
128	1,890	Extension for reply within fifth month	[ ]
119	310	Notice of Appeal	[ ]
120	310	Filing a brief in support of an appeal	[ 310.00]
121	270	Request for Oral Hearing	[ ]
138	1,510	Petition to institute a public use proceeding	[ ]
140	110	Petition to revive - unavoidable	[ ]
141	1,240	Petition to revive - unintentional	[ ]
142	1,240	Utility issue fee (or reissue)	[ ]
143	440	Design issue fee	[ ]
144	600	Plant issue fee	[ ]
122	130	Petitions to the Commissioner	[ ]
123	50	Processing fee under 37 CFR 1.17(q)	[ ]
126	180	Submission of Information Disclosure Statement	[ ]
581	40	Recording each patent assignment per property (times number of properties)	[ ]
146	710	Filing a submission after final rejection (37 CFR.129(a))	[ ]
149	710	For each additional invention to be examined (37 CFR 1.129(b))	[ ]
179	710	Request for Continued Examination (RCE)	[ ]
169	900	Request for expedited examination of a design application	[ ]
195	300	Publication fee for early, voluntary, or normal publication	[ ]
196	300	Publication fee for republication	[ ]
089	200	Filing application for patent term adjustment	[ ]
090	200	Request for reinstatement of term reduced	[ ]
		Other fee (specify)	[ ]

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL \$ 310.00**

SUBMITTED BY:					Complete (if applicable)	
NAME AND REG. NUMBER Richard Wydeven, Registration No. 39,881						
SIGNATURE			DATE	8/15/01	DEPOSIT ACCOUNT USER ID	02-2135

<p align="center"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	Application Number	09/372,646
	Filing Date	August 12, 1999
	First Named Inventor	Marc A. JURGOVAN et al.
	Group Art Unit	1761
	Examiner Name	D. Becker
	Attorney Docket Number	914-1372DIV1
Title of the Invention: FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER		

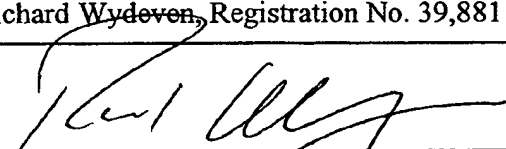
## TRANSMITTAL OF APPEAL BRIEF

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Enclosed in connection with the above-referenced application is an Appeal Brief with Appendix in triplicate. A check in the amount of \$310.00 is attached hereto to cover the fee for filing a brief in support of a notice of appeal.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-2135. A duplicate copy of this sheet is enclosed for that purpose.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	8/15/01
ADDRESS	Rothwell, Figg, Ernst & Manbeck, P.C. 555 Thirteenth Street, N.W., Suite 701, East Tower				
CITY	Washington	STATE	D.C.	ZIP CODE	20004
COUNTRY	U.S.A.	TELEPHONE	(202) 783-6040	FAX	(202) 783-6031

<p style="text-align: center;"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application Number</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket Number</i>	914-1372DIV1
<i>Title of the Invention:</i> FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER		

## APPEAL BRIEF

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

This is Applicants' brief in support of their appeal against the rejections set forth in the Office Action of February 13, 2001.

### **REAL PARTY IN INTEREST**

The real party in interest is Recot, Incorporated, the assignee of this application.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

### **STATUS OF CLAIMS**

Claims 1-26 are pending in this application. All claims stand rejected.

### **STATUS OF AMENDMENTS**

Applicants have filed no amendments subsequent to the final rejection.

### **SUMMARY OF INVENTION**

The invention comprises a flexible package 10 having front and rear walls 11, 12 formed of an elastomeric material and sealed together at a top seal 20 (p. 10, lns. 15-20; p. 11, ln. 28-p. 12, ln.

8). A zipper 40 includes first and second zipper parts. The first zipper part 40-1 with a first engagement member 43-1 is attached to an inside surface of the front wall 11, and the second zipper part 40-2 with a second engagement member 43-2 is attached to an inside surface of the rear wall 12 (p. 14, ln. 28–p. 15, ln. 4). The first engagement member 43-1, comprising a projection, and the second engagement member 43-2, comprising a socket, are engaged together (p. 17, lns. 1-4). The top seal 20 is manually pinch-grip openable, and the first and second engagement members are manually pinch-grip openable, under a pinch-grip pulling force applied to the front wall 11 and rear walls 12 below the engagement members 43-1, 43-2 (Figures 1-2; p. 13, lns. 5-14; p. 14, lns. 1-23). The front wall 11 and the rear wall 12 have sufficient strength to resist tearing and deformation during the pinch-grip pulling force (p. 11, ln. 18–p. 12, ln. 8).

The invention also includes a package wherein the top seal 20 is formed by applying heat and/or pressure for a prescribed dwell (p. 11, lns. 8-17). The invention also includes a package in which the top seal is a non-heated pressure and dwell seal (p. 11, lns. 14-17). The front wall 11 and rear wall 12 are preferably formed of laminated plastic including inner sealable layers 11-i, 12-i and outer layers 11-o, 12-o (p. 11, lns. 18-23).

Food product (FP) is stored inside the package below the first and second engagement members (Figure 2; p. 11, ln. 1-2). According to another aspect of the invention, the food product includes salty, sweet or savory snack foods (p. 7, lns. 1-4).

According to another aspect of the invention, the top seal is manually pinch-grip openable under a pinch grip pulling force of less than about 3 pounds/inch and most preferably between 1 and 2 pounds/inch (p. 12, lns. 15-17). The first and second engagement members of the zipper are preferably manually pinch-grip openable under a pulling force of less than about 2½ pound/inch and

most preferably openable under a pinch-grip pulling force of between 1½ to 2 pounds/inch (p. 14, Ins. 4-7).

According to another aspect of the invention, the package includes a bottom seal 30 (p. 10, ln. 16). According to another aspect of the invention, the first zipper part 40-1 includes at least two points of sealant (C in Figure 3) attached to either the front wall 11 or the back wall 12, and the second zipper part 40-2 includes at least 2 points of sealant (C and S in Figure 3) sealed to the inner layer of the other of the front wall 11 and back wall 12 (p. 17, Ins. 6-27).

According to another aspect of the invention, the seal between the inner sealable layers 11-i, 12-i is openable by delamination and the engagement between the engagement members 43-1 and 43-2 of the zipper 40 are disengaged by the application of the predetermined pinch-grip pulling force applied to each of the front and rear walls 11, 12 below the zipper 40 (p. 13, Ins. 5-23).

### **ISSUES**

The issues to be decided on this appeal are as follows:

- 1) whether claims 1-12 and 17-22 are unpatentable under 35 U.S.C. § 103(a) over Christoff, U.S. Patent No. 4,617,683 (Christoff '683); and
- 2) whether claims 13-16 and 23-26 are unpatentable under 35 U.S.C. § 103(a) over Christoff '683 in view of Thompson et al., U.S. Patent No. 5,224,779 (Thompson '779).

### **GROUPING OF CLAIMS**

Claims 1-16 stand or fall together and claims 17-26 stand or fall together.

## ARGUMENT

### Claims 1-12

Claims 1-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683. Because the Examiner has not made out a *prima facie* case of obviousness, the applicants respectfully request reversal of the rejection.

While the rejection of claims 1-12 is styled as a rejection over Christoff '683, the Examiner also cites Staller, U.S. Patent No. 3,440,696 for its disclosure of a single male protrusion and single female socket and Thompson '779 for its disclosure of heat seals used as top seals in packaging. The Examiner has failed to make out a *prima facie* case of obviousness in that he has not found disclosure, in one or more prior art references, of all of the elements recited in independent claim 1, nor has the Examiner found any teaching of, or motivation for, creating the combination of elements recited in claim 1. For example, the Examiner has not cited any teaching of a flexible package including first and second zipper parts wherein the first and second engagement members of the zipper parts are engaged together. The Examiner also has not cited any disclosure in the prior art of a "top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members." The Examiner contends that Christoff '683 discloses at col. 6, lns. 30-44 a package that is pinch-grip openable. The applicants respectfully disagree. Christoff '683 describes the method by which the bag disclosed in that patent may be opened as follows:

Opening of the bag may be effected either by pulling the seal 42 at the top end of the bag open, or by severing the top end of the bag along a line 58 between the seal 42 and the reclosable fastener 27 and then

using the sidewall portions 59 located outwardly from the fastener 27 as pull flanges for pulling the closed fastener open when desired. (Col. 6, lns. 35-41)

In the context of the present application, the term pinch-grip openable has a specific meaning which is shown in Figures 1 and 2 and described, inter alia, at page 11, lines 3-7. In particular, the consumer pinches the unsealed portions of the opposed walls of the package with his or her hands and pulls generally perpendicularly outwardly in the directions G, G' (see Figures 1 and 2). Christoff '683, on the other hand, describes that the package is opened by pulling the seal 42 open or by severing the top of the bag and using sidewall portions 59 located outwardly from the fastener 27 as pull flanges. The package of Christoff '683 is not disclosed to be pinch-grip openable.

To promote consumer acceptance, it is desirable that the reclosable package of the present invention be openable in substantially the same manner as is a conventional snack food package lacking the reclosability feature. Conventional snack food (e.g., chips) packages are typically opened by the consumer grasping the front and back walls of the package at a location below a top seal and pulling the front and rear walls away from each other thereby causing the sealed top of the package to open by delamination progressing from inside the package (i.e., the product side of the seal) to the outer edge of the seal. By delaminating, as opposed to tearing, the outer surfaces of the package walls remain substantially intact, and thus present a more acceptable appearance and are less prone to subsequent tearing from the edge in a longitudinal direction than if the package walls were to tear or distort upon opening.

Furthermore, for the reclosable package containing a snack food product of the present invention, it is desirable that the reclosable feature (i.e., the zipper) be closed during shipment, storage, display, etc. of the package with the snack food product sealed therein so as to avoid snack



food crumbs from becoming lodged in the zipper thereby interfering with subsequent functioning of the zipper. Therefore, to foster consumer acceptance of the reclosable package, it is desirable that the package, which is both sealed and zippered closed, be openable by a consumer using the same pinch-grip pulling procedure that the consumer would use on a snack food package that does not include the reclosable zipper.

In the invention recited in claim 1 in which the first and second engagement members of the first and second zipper parts, respectively, are engaged together and in which a front wall and a rear wall of the package are sealed together at a top seal, the top seal is manually pinch-grip openable and the first and second engagement members are manually pinch-grip openable **"under a pinch-grip pulling force applied to said front and rear walls below said engagement members."** The cited reference, Christoff '683, specifically teaches that the bag is opened by pulling the seal 42 at the top end of the bag open or by severing the top end of the bag along a line between the seal and the reclosable fastener [see Figure 3] and then using the side wall portions located outwardly (i.e., above, see Figure 3) from the fastener 27 as pull flanges for pulling the closed fastener open when desired. See column 6, lines 35-41. This is different from the invention recited in claim 1 in which no severing is required and in which the top seal and the engagement members are pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members. Christoff '683 does not disclose nor does it suggest a reclosable package wherein both the top seal and the interengaged zipper portions are substantially simultaneously openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. The Examiner acknowledges this shortcoming of Christoff '683 and disregards it based on the assertion that the phrase "under a pinch-grip pulling force applied to said front and rear walls below said engagement members"

merely represents preferred method of use of the claimed invention. Applicants respectfully disagree. The limitation "said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members" of claim 1 represents a limitation defining structural features of the top seal, the engagement members, and the interrelationship of the two. In the claimed invention, the top seal and the engagement members are constructed and arranged so as to be openable in the manner claimed. Being openable upon the application of a pinch-grip pulling force below the seal and the zipper is more than a mere preferred method of use.

There is no disclosure in Christoff '683 that the package disclosed in that patent can be opened in the manner recited in claim 1. Thus, Christoff '683 does not render obvious the invention of claim 1.

Accordingly, claim 1, and all claims dependent therefrom, are allowable over Christoff '683 and reversal of the rejection of claims 1-12 is respectfully requested.

Claims 17-22

Claims 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683. Because the Examiner has not made out a *prima facie* case of obviousness, the applicants respectfully request reversal of the rejection.

Claim 17 recites that the seal and the inner sealable layers are openable by delamination and the engagement between the engagement members of the zipper are disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper. The advantages of delamination, versus tearing, are described above. While Christoff '683 discloses that the package described may be of a laminated construction, it does not describe a

package that is openable by delamination at the seal. Thus, in addition to the reasons discussed above with respect to claim 1, the invention of claim 17 is patentable over Christoff '683 because Christoff '683 does not disclose a combination including a seal that is openable by delamination upon the application of a predetermined pinch-grip pulling force.

Thus, claim 17, and all claims depending therefrom, are allowable over Christoff '683 and reversal of the rejection of claims 17-22 is respectfully requested.

Claims 13-16 and 23-26

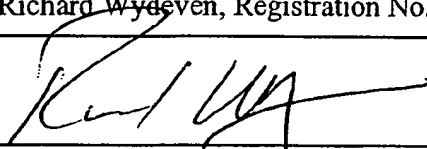
Claims 13-16 and claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683 as applied to independent claims 1 and 17 in view of Thompson et al., U.S. Patent No. 5,224,779. Claims 13-16 and 23-26 are believed to be allowable as being dependent upon allowable base claims, there being nothing in the teachings of Thompson '779 to overcome the deficiencies of Christoff '683 with respect to the inventions of claims 1 and 17. Specifically, there is nothing in Thompson '779 that would disclose or suggest a package and product combination wherein the package has a top seal and interengaged members of a zipper are openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Therefore, withdrawal of the rejections of claim 13-16 and 23-26 is respectfully requested.

CONCLUSION

In view of the foregoing, claims 1-26 are patentable over the prior art of record. Thus, the rejections of claims 1-26 are submitted to be unsupportable on the record and therefore improper. It is respectfully requested that the Board reverse all grounds of rejection and direct the passage of this application to issue.

The Commissioner is hereby authorized to charge any fee or credit any overpayment pursuant to 37 CFR 1. 16 or 1.17 to Deposit Account No. 02-2135.

Attached hereto is a copy of the claims of the application pending on appeal.

RESPECTFULLY SUBMITTED,					
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SIGNATURE				DATE	8/15/01
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CITY	Washington	STATE	D.C.	ZIP CODE	20004
COUNTRY	U.S.A.	TELEPHONE	(202) 783-6040	FAX	(202) 783-6031

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**APPENDIX**

1. In combination:
  - a) a flexible package having
    - a elastomeric front wall and an elastomeric rear wall;
    - said front wall and said rear wall being sealed together at a top seal;
    - a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;
    - a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;
    - said first and second engagement members being engaged together;
    - said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;
    - said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and
  - b) a food product stored inside said package below said first and second engagement members.
2. The combination of claim 1, wherein said top seal is formed by applying heat or pressure for a prescribed dwell period.

3. The combination of claim 2, wherein said top seal is formed by applying heat and pressure for a prescribed dwell period.

4. The combination of claim 2, wherein said top seal is a non-heated, pressure and dwell seal.

5. The combination of claim 1, wherein said engagement members include interlocking protrusions.

6. The combination of claim 5, wherein said first engagement member has a male protrusion and wherein said second engagement member has at least one protrusion forming a female socket, said male protrusion being engaged in said female socket.

7. The combination of claim 1, wherein said front and rear walls are laminated plastic walls including at least one inner sealable layer and at least one outer wall layer.

8. The combination of claim 1, wherein said first engagement member consists of a single male protrusion and wherein said second engagement member consists of a single female socket, said male protrusion being engaged in said female socket.

9. The combination of claim 1, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.

10. The combination of claim 1, wherein said food product includes salty, sweet or savory snack foods.

11. The combination of claim 10, wherein said food product includes snack food chips.

12. The combination of claim 11, wherein said food product includes potato or corn based chips.

13. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.

14. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.

15. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about 2½ lbs/inch.

16. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about 1½ to 2 lbs/inch.

17. In combination:

- a) a flexible package, including
  - front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,
  - a bottom seal formed between lower sides of said front and rear walls;
  - a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;
  - a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;
  - said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;
  - said first engagement member being engaged with said second engagement member;
  - said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls;



said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper; and

b) food product stored within said package between said closed zipper and said bottom seal.

18. The combination of claim 17, wherein said first engagement member has a male protrusion and said second engagement member has a female socket, said male protrusion being engaged with said female socket.

19. The combination of claim 17, wherein said first engagement member consists of a single male protrusion and said second engagement member consists of a single female socket, said male protrusion being engaged with said female socket.

20. The combination of claim 17, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.

21. The combination of claim 17, wherein said food product includes salty, sweet or savory snack foods.

22. The combination of claim 21, wherein said snacks foods include potato or corn based chips.
23. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.
24. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.
25. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about 2½ lbs/inch.
26. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about 1½ to 2 lbs/inch.

**THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:**

ATTORNEY DOCKET NO.	<u>914-1372DIV1</u>	SERIAL/PATENT NO.	<u>09/372,646</u>
ATTORNEY/TYPIST INITIALS	<u>RW:slm</u>	FILED/ISSUED	<u>August 12, 1999</u>
DUE DATE	<u>07/13/2001</u>	APPLICANT/PATENTEE	<u>Jurgovan et al.</u>

**DOCUMENTS ATTACHED:**

1. Transmittal Form
2. Fee Transmittal w/Check for \$700
3. Notice of Appeal w/extension of time request



23739

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WASHINGTON, DC

15-52/540

06/14/2001

\$ 700.00

DOLLARS

ROTHWELL, FIGG, ERNST & MANBECK

*Vincent M. De Luca*  
AUTHORIZED SIGNATURE

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& TRADEMARKS

ROTHWELL, FIGG, ERNST & MANBECK, P.C.

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Notice of Appeal & Extension of Time

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Date 06/14/2001

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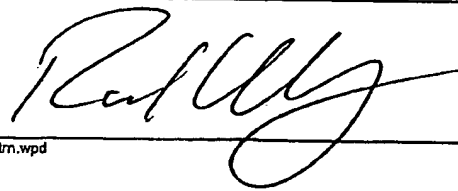
INVO

COMMISSIONER OF PATENTS & TRADEMARKS

Date Of \$700.00

<b>TRANSMITTAL FORM</b> <i>(to be used for all correspondence after initial filing)</i>	Complete if Known	
	Application Number	09/372,646
	Filing Date	August 12, 1999
	First Named Inventor	Marc A. JURGOVAN
	Examiner Name	D. Becker
	Group Art Unit	1761
Total Number of Pages in This Submission 5	Attorney Docket Number	914-1372DIV1
ENCLOSURES (check all that apply)		

- |  |   |   |
|--|---|---|
| <input checked="" type="checkbox"/> Fee Transmittal Form                     | <input type="checkbox"/> Assignment Papers  | <input type="checkbox"/> After Allowance Communication to Group                                       |
| <input checked="" type="checkbox"/> Fee Attached                             | <input type="checkbox"/> Drawing(s)   | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences                   |
| <input type="checkbox"/> Amendment/Reply                                     | <input type="checkbox"/> Licensing-related Papers                                       | <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) |
| <input type="checkbox"/> After Final   | <input type="checkbox"/> Petition   | <input type="checkbox"/> Proprietary Information  |
| <input type="checkbox"/> Affidavits/declaration(s)                           | <input type="checkbox"/> Petition to Convert to a Provisional Application               | <input type="checkbox"/> Status Letter  |
| <input checked="" type="checkbox"/> Extension of Time Request                | <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address | <input type="checkbox"/> Other Enclosure(s) (please identify below):                                  |
| <input type="checkbox"/> Express Abandonment Request                         | <input type="checkbox"/> Terminal Disclaimer  |   |
| <input type="checkbox"/> Information Disclosure Statement                    | <input type="checkbox"/> Request for Refund   |   |
| <input type="checkbox"/> Certified Copy of Priority Document(s)              | <input type="checkbox"/> CD, Number of CD(s)  |   |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application    | REMARKS:  |   |
| <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53 |   |   |

SUBMITTED BY:				Complete (if applicable)	
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE		DATE	6/15/01	DEPOSIT ACCOUNT USER ID	02-2135

<b>FEE TRANSMITTAL</b> <b>for FY 2001</b>  <b>(Large Entity)</b>		Complete if Known	
		Application Number	09/372,646
		Filing Date	August 12, 1999
		First Named Inventor	Marc A. JURGOVAN et al.
		Group Art Unit	1761
Examiner Name		D. Becker	
Total Amount of Payment (\$)	700.00	Attorney Docket Number	914-1372DIV1

**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge additional fees and credit any overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Figg, Ernst & Manbeck
- ☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17
- ☐ Applicant claims small entity status
2. ☒ Payment Enclosed:
- ☒ Check
- ☐ Credit Card

**FEE CALCULATION**
**1. FILING FEE**

Fee Code	Fee Paid	Fee Description	Fee Paid
101	710	Utility Filing Fee	[ ]
106	320	Design Filing Fee	[ ]
107	490	Plant Filing Fee	[ ]
108	710	Reissue Filing Fee	[ ]
114	150	Provisional Filing Fee	[ ]

**SUBTOTAL \$ 0.00**

**2. CLAIMS**

	Extra Claims	Fee	Fee Paid
Total Claims	- 20" =	x \$ 18.00 =	[ ]
Independent Claims	- 3" =	x \$ 80.00 =	[ ]
Multiple Dependent Claims		+ \$ 270.00	[ ]

\*or number previously paid, if greater;

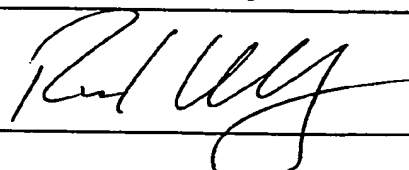
**SUBTOTAL \$ 0.00**

**FEE CALCULATION (continued)**
**3. ADDITIONAL FEES**

Fee Code	Fee Paid	Fee Description	Fee Paid
105	130	Surcharge - late filing fee or oath	[ ]
127	50	Surcharge - late provisional filing fee or cover sheet	[ ]
139	130	Non-English specification	[ ]
147	2,520	For filing a request for reexamination	[ ]
112	920	Requesting publication of SIR prior to Examiner action	[ ]
113	1,840*	Requesting publication of SIR after Examiner action	[ ]
115	110	Extension for reply within first month	[ ]
116	390	Extension for reply within second month	[ 390.00]
117	890	Extension for reply within third month	[ ]
118	1,390	Extension for reply within fourth month	[ ]
128	1,890	Extension for reply within fifth month	[ ]
119	310	Notice of Appeal	[ 310.00]
120	310	Filing a brief in support of an appeal	[ ]
121	270	Request for Oral Hearing	[ ]
138	1,510	Petition to institute a public use proceeding	[ ]
140	110	Petition to revive - unavoidable	[ ]
141	1,240	Petition to revive - unintentional	[ ]
142	1,240	Utility issue fee (or reissue)	[ ]
143	440	Design issue fee	[ ]
144	600	Plant issue fee	[ ]
122	130	Petitions to the Commissioner	[ ]
123	50	Processing fee under 37 CFR 1.17(q)	[ ]
126	180	Submission of Information Disclosure Statement	[ ]
581	40	Recording each patent assignment per property (times number of properties)	[ ]
146	710	Filing a submission after final rejection (37 CFR.129(a))	[ ]
149	710	For each additional invention to be examined (37 CFR 1.129(b))	[ ]
179	710	Request for Continued Examination (RCE)	[ ]
169	900	Request for expedited examination of a design application	[ ]
195	300	Publication fee for early, voluntary, or normal publication	[ ]
196	300	Publication fee for republication	[ ]
089	200	Filing application for patent term adjustment	[ ]
090	200	Request for reinstatement of term reduced	[ ]
		Other fee (specify)	[ ]

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL \$ 700.00**

SUBMITTED BY:				Complete (if applicable)	
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE		DATE	6/15/01	DEPOSIT ACCOUNT USER ID	02-2135

Docket No.: 914-1372DIV1

**NOTICE OF APPEAL FROM THE PRIMARY EXAMINER  
TO THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of Marc A. JURGOVAN et al.

Serial No.: 09/372,646

Filed: August 12, 1999

For: FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER

Group Art Unit: 1761

Examiner: D. Becker

Applicants hereby appeal to the Board of Patent Appeals and Interferences from the decision of the Examiner dated February 13, 2001 rejecting the following claims: 1-26.

The fee for this Notice of Appeal is \$310.00

An extension of time is requested for two months. The required fee for this extension of time is \$390.00.

A check for \$700.00 is enclosed.

The Commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 02-2135. An additional copy of this Notice is enclosed herewith.

Respectfully submitted,

By



Richard Wydeven

Attorney for Applicants

Registration No. 39,881

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**UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646 08/12/99 JURGOVAN

M 914-1372DIW1

IN22/0213

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EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

02/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

ROTHWELL FIGG ERNST & MANGBECK

FEB 14 2001

REFERRED TO *BECK*  
FILE NO. *914-1372*  
OK TO FILE

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**Office Action Summary**

Application No.

09/372,646

Applicant(s)

JURGOVAN ET AL.

Examiner

Drew E Becker

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 January 2001.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of the CERTIFIED copies of the priority documents have been:
1. ☐ received.
2. ☐ received in Application No. (Series Code / Serial Number) \_\_\_\_\_.
3. ☐ received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 14) ☐ Notice of References Cited (PTO-892)
- 15) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 16) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 17) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 18) ☐ Notice of Informal Patent Application (PTO-152)
- 19) ☐ Other:

Art Unit: 1761

## DETAILED ACTION

### Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), a rib and groove zipper as exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff), walls of laminate materials (column 4, lines 4-23), a bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 and "pinch-grip pulling force applied to each of said front and rear walls below said zipper" in claim 17 are preferred methods of use of the claimed package and therefore are not given weight. It would have been obvious to one of ordinary skill in the art to package foods such as

Art Unit: 1761

potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64) and since heat seals were commonly used for top seals as evidenced by Thompson et al [Pat. No. 5,224,779] (Figure 5, 28).

3. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not teach pinch grip forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers and since Thompson et al teach that this is a common range of opening force for packages (column 3, line 4).

### ***Response to Arguments***

1. Applicant's arguments filed January 29, 2001 have been fully considered but they are not persuasive.

Art Unit: 1761

Applicant argues that Christoff only teaches opening the package from above the zipper. As mentioned above, this is merely a preferred method of using the claimed package and as such is not given weight.

***Conclusion***

2. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E Becker whose telephone number is 703-305-0300. The examiner can normally be reached on Monday-Thursday 7am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for

Application/Control Number: 09/372,646

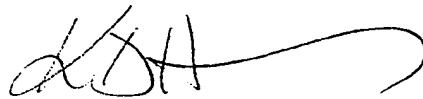
Page 5

Art Unit: 1761

the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1495.

Drew Becker  
February 5, 2001

A handwritten signature in black ink, appearing to read 'KH', with a long, sweeping horizontal line extending to the right.

KEITH HENDRICKS  
PRIMARY EXAMINER

**THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:**

ATTORNEY DOCKET NO.	<u>914-1372DIV1</u>	SERIAL/PATENT NO.	<u>09/372,646</u>
ATTORNEY/TYPIST INITIALS	<u>BGN:RW:slm</u>	FILED/ISSUED	<u>August 12, 1999</u>
DUE DATE	<u>1/30/2001</u>	APPLICANT/PATENTEE	<u>Marc A. JURGOVAN et al.</u>

**DOCUMENTS ATTACHED:**

1. Amendment in response to the Office Action mailed 10/30/2000



<p style="text-align: center;"><b>IN THE UNITED STATES PATENT AND TRADEMARK OFFICE</b></p>	<i>Application Number</i>	09/372,646
	<i>Filing Date</i>	August 12, 1999
	<i>First Named Inventor</i>	Marc A. JURGOVAN et al.
	<i>Group Art Unit</i>	1761
	<i>Examiner Name</i>	D. Becker
	<i>Attorney Docket Number</i>	914-1372DIV1
<i>Title of the Invention:</i> <b>FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER</b>		

### **AMENDMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action of October 30, 2000, kindly enter the following amendments and remarks.

Amend claim 17 as shown on the following page.

A marked-up copy of the original text of the amended claim is attached to this amendment. Material inserted is indicated by redlining (~~insertion~~) and material deleted is indicated by strike-out (~~strike-out~~).

**Clean Copy of Amended Claim 17**

17. (Twice Amended) In combination:

- a) a flexible package, including
  - front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,
  - a bottom seal formed between lower sides of said front and rear walls;
  - a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;
  - a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;
  - said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;
  - said first engagement member being engaged with said second engagement member;
  - said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls;
  - said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper; and
- b) food product stored within said package between said closed zipper and said bottom seal.



## REMARKS

Reconsideration and allowance in view of the foregoing amendments and the following remarks are respectfully requested. Claims 1-26 are pending in this application.

### Rejection Under § 112, First Paragraph

Claims 1-26 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. The Examiner contends that the introductory phrase "In combination:" used in each of the claims makes it unclear as to whether a package is being claimed or a product. The applicants respectfully traverse the rejection. A package and a product stored in said package are being claimed in combination. Thus, the applicants respectfully contend that the introductory phrase "In combination:" is appropriate and would reasonably apprise one of ordinary skill in the art of the scope of the invention claimed, as is required by § 112. Accordingly, withdrawal of the rejections under 35 U.S.C. § 112, second paragraph, is respectfully requested.

### Prior Art Rejections

Claims 1-12 and 17-22 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff, U.S. Patent No. 4,617,683. The applicants respectfully traverse the rejection with respect to independent claim 1.

To promote consumer acceptance, it is desirable that the reclosable package of the present invention be openable in substantially the same manner as is a conventional snack food package lacking the reclosability feature. Conventional snack food (e.g., chips) packages are typically opened by the consumer grasping the front and back walls of the package at a location below a top seal and pulling the front and rear walls away from each other thereby causing the sealed top

of the package to open by delamination progressing from inside the package (i.e., the product side of the seal) to the outer edge of the seal.

Furthermore, for the reclosable package containing a snack food product of the present invention, it is desirable that the reclosable feature (i.e., the zipper) be closed during shipment, storage, display, etc. of the package with the snack food product sealed therein so as to avoid snack food crumbs from becoming lodged in the zipper thereby interfering with subsequent functioning of the zipper. Therefore, to foster consumer acceptance of the reclosable package, it is desirable that the package, which is both sealed and zippered closed, be openable by a consumer using the same pinch-grip pulling procedure that the consumer would use on a snack food package that does not include the reclosable zipper.

In the invention recited in claim 1 in which the first and second engagement members of the first and second zipper parts, respectively, are engaged together and in which a front wall and a rear wall of the package are sealed together at a top seal, the top seal is manually pinch-grip openable and the first and second engagement members are manually pinch-grip openable "under a pinch-grip pulling force applied to said front and rear walls below said engagement members." The cited reference, Christoff '683, specifically teaches that the bag is opened by pulling the seal 42 at the top end of the bag open or by severing the top end of the bag along a line between the seal and the reclosable fastener [see Figure 3] and then using the side wall portions located outwardly (i.e., above, see Figure 3) from the fastener 27 as pull flanges for pulling the closed fastener open when desired. See column 6, lines 35-41. This is different from the invention recited in claim 1 in which the top seal and the engagement members are pinch-grip openable

under a pinch-grip pulling force applied to the front and rear walls below the engagement members. Christoff '683 does not disclose nor does it suggest a reclosable package wherein both the top seal and the interengaged zipper portions are substantially simultaneously openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Thus, Christoff '683 does not render obvious the invention of claim 1. Accordingly, claim 1 and all claims dependent therefrom are allowable over Christoff '683 and withdrawal of the rejection of claims 1-12 is respectfully requested.

With respect to independent claim 17, that claim has been amended to recite that the seal and the inner sealable layers are openable by delamination and the engagement between the engagement members of the zipper are disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper. For the reasons discussed above with respect to claim 1, the invention of claim 17 is not disclosed nor suggested by Christoff '683. Thus, claim 17 and all claims depending therefrom are allowable over Christoff '683 and withdrawal of the rejection of claims 17-22 is respectfully requested.

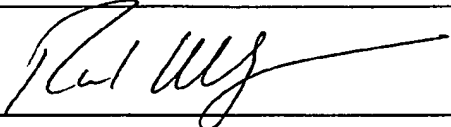
Claims 13-16 and claims 23-26 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Christoff '683 as applied to independent claims 1 and 17 in view of Thompson et al., U.S. Patent No. 5,224,779. Claims 13-16 and 23-26 are believed to be allowable as being dependent upon allowable base claims, there being nothing in the teachings of Thompson '779 to overcome the deficiencies of Christoff '683 with respect to the inventions of claims 1 and 17. Specifically, there is nothing in Thompson '779 that would disclose or suggest a package and product combination wherein the package has a top seal and interengaged members of a zipper

are openable by application of a pinch-grip pulling force applied below both the zipper and the top seal. Therefore, withdrawal of the rejections of claim 13-16 and 23-26 is respectfully requested.

*Comments Regarding Purportedly Pertinent Prior Art*

In paragraph 8 of the detailed action, the Examiner indicates that Tomic, U.S. Patent No. 6,131,248, and Johnson, U.S. Patent No. 6,065,872, are considered pertinent to the applicants' disclosure and are made of record. The applicants respectfully contend that neither of these references are proper prior art as against this application. The filing date of Tomic '248 is March 13, 1998, and the Rule 131 declaration filed by the applicants in response to the last Office Action (May 10, 2000) overcame the Ramsey reference (U.S. Patent No. 6,030,122) having a filing date of March 6, 1998. Thus, as Applicants have established an invention date predating March 6, 1998, the patent to Tomic having a filing date of March 13, 1998 is not a proper prior art reference against this application. With respect to Johnson '872, that patent has a filing date of February 4, 1999. The priority date of the present application is May 15, 1998. Thus, Johnson '872 postdates Applicants' priority date and therefore should not be cited against this application.

All objections and rejections having been addressed, it is respectfully submitted that the application is now in condition for allowance and a notice to that effect is earnestly requested.

RESPECTFULLY SUBMITTED,					
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881				
SIGNATURE				DATE	1/29/01
ADDRESS	Rothwell, Figg, Ernst & Manbeck, P.C. 555 Thirteenth Street, N.W., Suite 701, East Tower				
CITY	Washington	STATE	D.C.	ZIP CODE	20004
COUNTRY	U.S.A.	TELEPHONE	202-783-6040	FAX	202-783-6031

Attachment: Marked-Up Copy of Amendments

I:\DATA\CLIENTS\0914\01V014-1372.AM1

**Amended Claim 17: Version with markings to show changes made**

17. (Twice Amended) In combination:

a) a flexible package, including

front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,

a bottom seal formed between lower sides of said front and rear walls;

a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;

a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said first engagement member being engaged with said second engagement member;

said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls;

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force applied to each of said front and rear walls below said zipper; and

b) food product stored within said package between said closed zipper and said bottom seal.



**UNITED STATES DEPARTMENT OF COMMERCE**  
**Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/372,646	08/12/99	JURGOVAN	914-1372DIV1

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

IM62/1030

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/30/00

ENTERED  
10/31/00

Due 1/30/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

RECEIVED/DOCKETING	
ROTHWELL FIGG ERNST & MANBECK	
OCT 31 2000	
REFERRED TO	BGN
FILE NO.	914-1372-DIV2
OK TO FILE	

# Office Action Summary

Application No.  
09/372,646

Applicant(s)  
Jurgovan et al

Examiner  
Drew Becker

Group Art Unit  
1761



☒ Responsive to communication(s) filed on Oct 10, 2000

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---



Art Unit: 1761

## **DETAILED ACTION**

### ***Response to Amendment***

1. The declaration filed on October 10, 2000 under 37 CFR 1.131 is sufficient to overcome the Ramsey et al reference.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
4. Claims 1 and 17 recite "In combination:". It is not clear whether a package is being claimed or a product.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 1761

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-12 and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff [Pat. No. 4,617,683].

Christoff teaches a packaged product comprising elastomeric front and rear walls (Figure 2, 23-24), a top seal (Figure 2, 42), first and second interlocking zipper parts attached to the inside surfaces of the walls (Figure 2, 44), the package being pinch-grip openable (column 6, lines 30-44), the top seal being formed by sealing bars which exert a pressure (column 5, line 14), a rib and groove zipper as exemplified by Staller [Pat. No. 3,440,696] having a single male protrusion and single female socket (Figure 5, 48-49 of Staller) (column 9, line 41 of Christoff), walls of laminate materials (column 4, lines 4-23), a bottom seal (Figure 2, 42), and adhesive connecting the zipper and walls (column 6, line 62). Phrases such as "under a pinch-grip pulling force applied to said front and rear walls below said engagement members" in claim 1 are preferred methods of use of the claimed package and therefore are not given weight. McClintock et al teach a package which contains potato chips (column 2, line 14). It would have been obvious to one of ordinary skill in the art to package foods such as potato chips in the invention of Christoff since Christoff shows what appear to be chips in Figures 1-2 and teaches the conventionality of packaging potato chips in bags (column 2, line 24). It would have been obvious to one of ordinary skill in the art to form the top seal of Christoff with heat since Christoff already teaches heat sealing a fin seal (column 4, line 64) and since heat seals were commonly used for top seals as evidenced by Thompson et al [Pat. No. 5,224,779] (Figure 5, 28).

Art Unit: 1761

7. Claims 13-16 and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Christoff as applied to claims 1 and 17 above, in view of Thompson et al.

Christoff teaches the above mentioned concepts. Christoff does not teach pinch grip forces of 1-2 lb/in for the top seal and 1.5-2 lb/in for the zipper. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18) and an opening force of 1.5-6.0 lb (column 3, line 5). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Christoff since both are directed to packages with top seals and lower zippers and since Thompson et al teach that this is a common range of opening force for packages (column 3, line 4).

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tomic [Pat. No. 6,131,248] and Johnson [Pat. No. 6,065,872] teach packages having zipper located below top seals.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-26 have been considered but are moot in view of the new ground(s) of rejection.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 5:00 pm.

Application/Control Number: 09/372,646

Page 5

Art Unit: 1761

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0661.

Drew Becker

October 25, 2000

  
KEITH HENDRICKS  
PRIMARY EXAMINER

<b>Notice of References Cited</b>			Application No. <i>09/372646</i>		Applicant(s) <i>Jurgovan et al</i>	
			Examiner <i>Drew Becker</i>		Group Art Unit <i>1761</i>	Page <i>1</i> of <i>1</i>
<b>U.S. PATENT DOCUMENTS</b>						
*	DOCUMENT NO.	DATE	NAME		CLASS	SUBCLASS
A	<i>5944425</i>	<i>8-99</i>	<i>Forman</i>		<i>383</i>	<i>61</i>
B	<i>6030122</i>	<i>2-2000</i>	<i>Ramsey et al</i>		<i>383</i>	<i>61</i>
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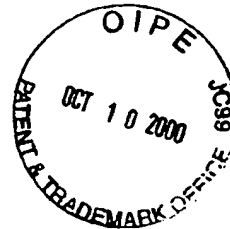
\* A copy of this reference is not being furnished with this Office action.  
(See Manual of Patent Examining Procedure, Section 707.05(a).)

**THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGMENT BY IT OF  
RECEIPT OF THE FOLLOWING IN REGARD TO:**

ATTORNEY DOCKET NO. 914-1372DIV1 SERIAL/PATENT NO. 09/372,646  
ATTORNEY/TYPIST INITIALS BGN:RW:slm FILED/ISSUED August 12, 1999  
DUE DATE October 10, 2000 APPLICANT/PATENTEE Marc A. JURGOVAN et al.

**DOCUMENTS ATTACHED:**

1. Fee Transmittal
2. Request for two-month extension of time
3. Check in the amount of \$380
4. Amendment in response to Office Action dated 5/10/00
5. Executed Declaration Under 37 C.F.R. § 1.131 w/Exhibit A



22056

CRESTAR BANK, NA  
WASHINGTON, DC

15-52/540

10/10/2000

\$380.00

\$

DOLLARS

ROTHWELL, FIGG, ERNST & KURZ

*Glenn R. Berger*  
AUTHORIZED SIGNATURE

20653951711

22056

NET 380.00

380.00

TRADEMARKS

\$380.00

ROTHWELL, FIGG, ERNST & KURZ, P.C.

INVOICE DATE DESCRIPTION NET

10/10/2000 22056

0914-1372 SLM

380.00

22056

Date 10/10/2000

COMMISSIONER OF PATENTS & TRADEMARKS

\$380.00

PAY  
TO THE  
ORDER OF

MEMO

ROTHWELL,

Date

<b>FEE TRANSMITTAL</b>  <b>(Large Entity)</b>		Complete if Known	
		Application Number	09/372,646
		Filing Date	August 12, 1999
		First Named Inventor	Marc A. JURGOVAN et al.
		Group Art Unit	1761
Examiner Name		D. Becker	
Total Amount of Payment (\$)	380.00	Attorney Docket Number	914-1372DIV1

**METHOD OF PAYMENT (check one)**

1. ☒ The Commissioner is hereby authorized to charge indicated fees and credit any overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Figg, Ernst & Manbeck
- ☒ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17
- ☐ Charge for the Issue Fee Set in 37 CFR 1.18 at the Mailing of the Notice of Allowance
2. ☒ Payment Enclosed: Check

**FEE CALCULATION**
**1. FILING FEE**

Fee Description	Fee Code	Fee Paid
<input type="checkbox"/> Utility Filing Fee	101	690.00
<input type="checkbox"/> Design Filing Fee	106	310.00
<input type="checkbox"/> Plant Filing Fee	107	480.00
<input type="checkbox"/> Reissue Filing Fee	108	690.00
<input type="checkbox"/> Provisional Filing Fee	114	150.00
<b>SUBTOTAL</b>	<b>\$</b>	<b>0.00</b>

**2. CLAIMS**

	Number of Extra	at Rate of	Fee Paid
Total Claims 26 - 20 =	0	x \$18.00 =	\$ 0.00
Independent Claims 2 - 3 =	0	x \$78.00 =	\$ 0.00
Multiple Dependent Claims		+ \$260.00	\$ 0.00
<b>SUBTOTAL</b>		<b>\$</b>	<b>0.00</b>

**3. ADDITIONAL FEES**

Fee Description	Fee Code	Fee Paid
<input type="checkbox"/> Surcharge - late filing fee or oath	105	130.00
<input type="checkbox"/> Surcharge - late provisional filing fee or cover sheet	127	50.00

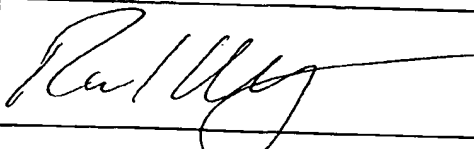
**FEE CALCULATION (continued)**

Fee Description	Fee Code	Fee Paid
<input type="checkbox"/> Non-English specification	139	130.00
<input type="checkbox"/> For filing a request for reexamination	147	2,520.00
<input type="checkbox"/> Requesting publication of SIR prior to Examiner action	112	920.00
<input type="checkbox"/> Requesting publication of SIR after Examiner action	113	1,840.00
<input type="checkbox"/> Extension for reply within first month	115	110.00
<input checked="" type="checkbox"/> Extension for reply within second month	116	380.00
<input type="checkbox"/> Extension for reply within third month	117	870.00
<input type="checkbox"/> Extension for reply within fourth month	118	1,360.00
<input type="checkbox"/> Extension for reply within fifth month	128	1,850.00
<input type="checkbox"/> Notice of Appeal	119	300.00
<input type="checkbox"/> Filing a brief in support of an appeal	120	300.00
<input type="checkbox"/> Request for Oral Hearing	121	260.00
<input type="checkbox"/> Petition to institute a public use proceeding	138	1,510.00
<input type="checkbox"/> Petition to revive -unavoidable	140	110.00
<input type="checkbox"/> Petition to revive - unintentional	141	1,210.00
<input type="checkbox"/> Utility issue fee (or reissue)	142	1,210.00
<input type="checkbox"/> Design issue fee	143	430.00
<input type="checkbox"/> Plant issue fee	144	580.00
<input type="checkbox"/> Petitions to the Commissioner	122	130.00
<input type="checkbox"/> Petitions related to provisional applications	123	50.00
<input type="checkbox"/> Submission of Information Disclosure Statement	126	240.00
<input type="checkbox"/> Recording each patent assignment per property (times number of properties)	581	40.00
<input type="checkbox"/> Filing a submission after final rejection (37 CFR 1.29(a))	146	690.00
<input type="checkbox"/> For each additional invention to be examined (37 CFR 1.129(b))	149	690.00

Other Fee (specify)

\*Reduced by Basic Filing Fee Paid

**SUBTOTAL \$380.00**

SUBMITTED BY:					Complete (if applicable)	
NAME AND REG. NUMBER	Richard Wydeven, Registration No. 39,881					
SIGNATURE		DATE	10/10/00	DEPOSIT ACCOUNT USER ID	02-2135	



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
	)	
Marc A. JURGOVAN et al.	)	
	)	Examiner: D. Becker
Serial No.: 09/372,646	)	
	)	Group Art Unit: 1761
Filed: August 12, 1999	)	
	)	
For: FLEXIBLE PACKAGE HAVING A	)	
RE-CLOSABLE ZIPPER	)	<u>October 10, 2000</u>

**REQUEST FOR EXTENSION OF TIME**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Under the provisions of § 1.136(a), applicant petitions the Commissioner of Patents and Trademarks to extend the time for response to the Office Action dated May 10, 2000 for two months from August 10, 2000 to October 10, 2000. Enclosed is a check for \$380.00 to cover the cost of the extension.

Also, if any additional payment is required, please charge the cost thereof to Deposit Account No. 02-2135. An extra copy of this letter is attached.

Respectfully submitted,

By: 

Richard Wydeven  
Attorney for Applicants  
Registration No. 39,881  
ROTHWELL, FIGG, ERNST & MANBECK, p.c.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040

914-1372DIV1  
BGN:RW:slm

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
	)	
Marc A. JURGOVAN et al.	)	
	)	Examiner: D. Becker
Serial No.: 09/372,646	)	
	)	Group Apt Unit: 1761
Filed: August 12, 1999	)	
	)	
For: FLEXIBLE PACKAGE HAVING A	)	
RE-CLOSABLE ZIPPER	)	<u>October 10, 2000</u>

AMENDMENT

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

In response to the Office Action of May 10, 2000, kindly enter the following amendments and remarks and the Declaration Under 37 C.F.R. § 1.131 filed herewith.

IN THE CLAIMS:

Kindly amend the claims as follows:

2. (Amended) The combination of claim 1, wherein said top seal is [a heat/pressure/dwell seal] formed by applying heat or pressure for a prescribed dwell period.

3. (Amended) The combination of claim 2, wherein said top seal is [a heat, pressure and dwell seal] formed by applying heat and pressure for a prescribed dwell period.

17. (Amended) In combination:

a) a flexible package, including

front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,

a bottom seal formed between lower sides of said front and rear walls;

a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;

a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said first engagement member being engaged with said second engagement member;

said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls [film at a first side of said vertical tube] and said at least two points of sealant on said second zipper part being sealed to said inner layer of the other of said front and rear walls [film at a second side of said vertical tube];

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and

b) food product stored within said package ~~between~~ said closed zipper and said bottom seal.

#### REMARKS

Reconsideration and allowance in view of the foregoing amendments, the following remarks, and the Declaration under 37 C.F.R. § 1.131 filed herewith are respectfully requested.

Claims 1-26 remain pending in this application.

Claim 3 is objected to under 37 C.F.R. § 1.75(c). As explained in the specification at page 11, the term "heat/pressure/dwell formed" is defined as "encompassing seals that are made between two adjacent walls by applying heat and/or pressure for a given dwell period." Claims 2

and 3 have been amended to clarify this aspect of the invention. Claim 2 recites that the seal is formed by applying heat or pressure for a prescribed dwell period. Claim 3 is amended to recite that the top seal is formed by applying heat and pressure for a prescribed dwell period.

Accordingly, withdrawal of the objection to claim 3 is respectfully requested.

Claims 1, 5-6, and 8-10 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Ramsey et al., U.S. Patent No. 6,030,122.

Applicants have submitted herewith a Declaration under 37 C.F.R. § 1.131 signed by the inventors in order to overcome the reference to Ramsey. In particular, attached to the Rule 131 Declaration are copies of pages from the inventors' notebook that were produced prior to March 6, 1998, the filing date of Ramsey '122. As explained in more detail in the Declaration, the notes attached to the Declaration reflect that the inventors had conceived of the invention as recited in, e.g., independent claims 1 and 17 of this application, prior to March 6, 1998.

In particular, demonstrating that the inventors had conceived of a pinch-grip openable package, the first page of (handwritten) notes attached to the Declaration state:

CONCEPT: M. DIERL & M. JURGOVAN  
FOR PINCH GRIP, EQUALIZE INTERNAL AND EXTERNAL  
OPENING FORCES TO ALLOW FOR BAG OPENING FROM  
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT  
STRIPPING OFF ZIPPER ON UNSUPPORTED/HINGED SIDE

Rule 131 Declaration, ¶ 4.

Moreover, the sheets attached to the handwritten notes show drawings illustrating various configuration options (OPTION 1-OPTION 5) that were conceived and evaluated. The drawings show configurations substantially similar to drawings of this application (see, e.g., Figs 3-5 of this

application). The first page of the notes makes specific "Reference" to "Standard Film Option 3 on attached deck" (See encircled note on left side of page) . Referring, for example, to the drawing illustrating OPTION 3, on which reference characters corresponding to the reference characters used in this application have been added, the drawing shows the zipper [40] including male member [40-1] and female member [40-2], a male projection [43-1], a female socket [43-2], a left flange [41-1], a right flange [41-2], central sections [S] behind the socket [43-2] and the projection [43-1], and sealant layers [C].

Also, the five options outlined reflect configurations that support the claims of this application. With respect to OPTION 3, the following features of the bag, and their respective sizes, are listed progressing from the top of the bag to the bottom::

STANDARD MATL (OPTION 3)

- 1/2" seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal

In the parlance of Frito-Lay, employer of the inventors at the time of invention and subsidiary of the assignee of this application, the term "Standard Material" meant, at the time of development of the subject matter of this application (and still means today), a laminated film having outer and inner propylene layers with an intervening polyethylene layer. When a seal is formed with such a film, the opposing inner layers of the front and back walls are sealed together, and, when the seal is broken, the inner layers delaminate from the outer layers, so that the outer

appearance of the bag is substantially intact. This is consistent with the film description provided in the present application, at for example, page 11, third full paragraph.

To demonstrate that the attached notes support independent claim 1, claim 1 is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

**In combination:**

**a) a flexible package having**

**a elastomeric front wall and an elastomeric rear wall;**

[OPTION 3 was snack food bag formed from "STANDARD MATL" (material), which, as described above, is a "flexible packaging having [an] elastomeric front wall and an elastomeric rear wall".]

**said front wall and said rear wall being sealed together at a top seal;**

[A "seal" at the top of the bag is a listed feature of OPTION 3.]

**a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure illustrates that the zipper includes a male (i.e., a first engaging) part.]

**a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure illustrates that the zipper includes a female (i.e., a second engaging) part.]

**said first and second engagement members being engaged together;**

[The figure associated with OPTION 3 illustrates that the first and second engaging members are engaged with one another]

**said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;**

[The attached hand written notes, as quoted above, make reference to pinch-grip opening from the product side, which would be below the engagement members (i.e., below the zipper). Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfining" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and**

[This is a reference to the relative sealing strength of the zipper as compared to the strength of the bag wall material to which the zipper components are secured. If the strength of the zipper is greater than the strength of the bag wall material, upon attempting to open the bag by a pinch-grip method, one or the other of the zipper components will tear away from its respective bag wall, rather than the two zipper components disengaging from one another. If one or the other zipper component tears away from its respective wall, the zipper can no longer be used to re-seal the bag. Thus, it was recognized that the bag wall material must have a strength greater than the holding strength of the interengaged zipper components, so that it could withstand pinch grip opening. This is reflected in the statement quoted above.]

**b) a food product stored inside said package below said first and second engagement members.**



[The food product is stored in the "bag (body)" below the "zipper", i.e., there is no intervening seal between the zipper and the storage portion of the bag.]

To demonstrate that the attached notes support independent claim 17, independent claim 17, as amended above, is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

**In combination:**

**a) a flexible package, including**

**front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,**

[A snack food bag, such as the one that had conceived, inherently includes front and rear walls, as reflected in the separate male and female portions of the zipper to be attached to different respective walls of the bag. As explained above, the "standard material" of which, e.g., the bag of OPTION 3 was to be made, was (and still is) a laminated plastic film having at least one inner sealable layer and at least one outer wall layer.]

**a bottom seal formed between lower sides of said front and rear walls;**

[The list of features of the bag of OPTION 3, as quoted above, includes a "bottom seal" below the "bag (body)" portion.]

**a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;**

[The list of features of the bag of OPTION 3, as quoted above, includes a "seal" as the first (i.e., topmost) feature on the list. As explained above, a seal using the "standard material" of which, e.g., the bag of OPTION 3 was to be made, would constitute a seal between the respective inner layers of the front and rear walls.]

**a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure associated with OPTION 3 illustrates that the zipper includes a male (i.e., a first engaging) part and that the male part has a widened base with three points of sealant: a central sealant section S and two sealant sections C.]

**said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. The figure associated with OPTION 3 illustrates that the zipper includes a female (i.e., a second engaging) part and that the female part has a widened base with two points of sealant: a central sealant section S and one sealant section C.]

**said first engagement member being engaged with said second engagement member;**

[The figure associated with OPTION 3 illustrates that the first and second engagement members are engaged with one another]

**said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to the inner layer of the other of said front and rear walls;**

[As shown in the figure associated with OPTION 3, one of the zipper components is attached to one of the walls of the package, and the other component is attached to the other wall.]

**said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and**

[As explained above, a seal between the inner layers of a standard material is broken by delamination of the inner seals. Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfining" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**b) food product stored within said package between said closed zipper and said bottom seal.**

[The food product is stored in the "bag (body)" below the "zipper" (i.e., there is no intervening seal between the zipper and the storage portion of the bag) and above the "bottom seal".]

Moreover, from the period prior to March 6, 1998 until May 15, 1998, the application date of the parent application (09/079,382, now U.S. Patent No. 5,972,396) from which this divisional application claims priority, the inventors worked diligently with in-house and outside patent counsel in order to prepare and file a patent application directed to the subject matter set forth in the notebook pages attached to the Declaration. (See Declaration ¶¶11-18)

Thus, the Declaration filed herewith establishes that Ramsey '122 is not a proper reference under 35 U.S.C. § 102(e) because it was not "filed in the United States before the invention" of the subject matter of this application.

Accordingly, applicants respectfully request withdrawal of the rejection of claims 1, 5-6, and 8-10 under § 102(e) based upon Ramsey '122.

With respect to the rejection of claims 2-4, 7, 13-21, and 23-26 under 35 U.S.C. § 103(a) over Ramsey '122 in view of Thompson et al., U.S. Patent No. 5,224,779, the applicants respectfully submit that with the removal of Ramsey '122 as a prior art reference against this application, the subject matter of the rejected claims is not anticipated nor rendered obvious by the teachings of Thompson '779.

Claims 2-4, 7, and 13-16 depend from independent claim 1 and are believed to be allowable as being dependent upon an allowable base claim, there being nothing in the disclosure of Thompson '779 to render claim 1 obvious. For example, Thompson '779 does not suggest or disclose a package having a top seal that is manually pinch grip openable or first and second engagement members that are manually pinch grip openable under a pinch grip pulling force applied to the front and rear walls of the package below the engagement members, and front and rear walls having sufficient strength to resist tearing and deformation under the application of the pinch grip pulling force during pinch grip opening.

In fact, the Thompson reference actually indicates: "[T]he package has a hermetic, inner seal which is an easy open or peel seal [16]. The peel seal is . . . opened with digital pull-apart forces which may be a continuation of the forces used to open the reclosable seal." Col. 2, lines 8-12. In Thompson '779, the peel seal is the "inner" seal -- inside the zipper portion. See col. 3, lines 20-30, Figures 1-4. Thus, Thompson '779 expressly describes opening the package from the outside (i.e., the consumer side) inward to the product side. This is exactly opposite to the pinch grip opening described in this application and recited in the claims.

Accordingly, it is respectfully submitted that independent claim 1 and claims 2-4, 7, and 13-16 depending therefrom are allowable.

With the removal of Ramsey as a prior art reference against this application, it is respectfully submitted that independent claim 17 and dependent claims 18-21 and 23-26 are allowable over the teachings of Thompson '779. For example, as explained above, Thompson '779 does not disclose a package having a seal between inner sealable layers that is openable by delamination and wherein engagement between the engagement members of the zipper is disengaged upon the application of a predetermined pinch grip pulling force. Accordingly, it is respectfully submitted that independent claim 17 and claims 18-21 and 23-26 depending therefrom are allowable.

Thus, applicants respectfully request withdrawal of the rejections of claim 2-4, 7, 13-21, and 23-26 under § 103 under Ramsey in view of Thompson.

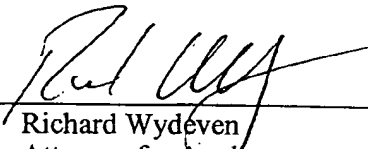
With respect to the rejection of claims 11-12 under 35 U.S.C. § 103(a) as being unpatentable over Ramsey in view of Cadwallader (5,542,766), it is respectfully submitted that with the removal of Ramsey '122 as a reference, dependent claims 11-12, depending from independent claim 1, are not rendered obvious by the teachings of Cadwallader '766. Cadwallader '766 is cited merely for its disclosure of a container of snack food chips, such as potato- or corn-based chips. It has no disclosure of, for example, first and second zipper parts attached to an inside surface of the front and rear walls of a package, a top seal of a package that is manually pinch grip openable, or first and second engagement members that are manually pinch grip

openable. Accordingly, it is respectfully submitted that dependent claims 11 and 12 are allowable, and withdrawal of the rejection of claims 11-12 is respectfully requested.

Finally, with respect to the rejection of claim 22 under § 103(a) over Ramsey and Thompson and further in view of Cadwallader, it is respectfully submitted that with the removal of Ramsey as a prior art reference against this application, claim 22, which depends from independent claim 17, is not rendered obvious by the teachings of Thompson '779 and Cadwallader '766 alone. As explained above, there is no teaching in either Thompson '779 or Cadwallader '766 of all of the features of the combination recited in claim 17, such as, for example, the seal between the inner sealable layers being openable by delamination and engagement between the engagement members of the zipper being disengaged upon the application of a predetermined pinch grip pulling force. Accordingly, it is respectfully submitted that dependent claim 22 is allowable, and withdrawal of the rejection of claim 22 is respectfully requested.

All objections and rejections having been addressed, it is respectfully submitted that the present application is now in a condition for allowance and a notice to that effect is earnestly requested.

Respectfully submitted,

By: 

Richard Wydeven  
Attorney for Applicant  
Registration No. 39,881  
ROTHWELL, FIGG, ERNST & MANBECK, p.c.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040

914-1372DIV1  
RW:slm

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	)	
	)	
Marc A. JURGOVAN et al.	)	
	)	Examiner: D. Becker
Serial No.: 09/372,646	)	
	)	Group Art Unit: 1761
Filed: August 12, 1998	)	
	)	
For: FLEXIBLE PACKAGE HAVING A	)	
RE-CLOSABLE ZIPPER	)	

**DECLARATION UNDER 37 C.F.R. § 1.131**

We, Marc A. Jurgovan and Martin B. Dierl, the inventors in the above-captioned patent application, hereby respectfully submit this declaration to overcome the primary reference cited by the Examiner in the Office Action of May 10, 2000, namely, U.S. Patent No. 6,030,122 to Ramsey et al., having a filing date of March 6, 1998. To that end, we hereby declare as follows:

1. A laboratory notebook was kept by us in connection with the development of the subject matter of this application.
2. During the period of time the subject matter of this application was being developed, we were employed by Frito-Lay, Incorporated of Plano, Texas, a subsidiary of Recot, Incorporated, the assignee of this application and the parent application, 09/079,382 (now U.S. Patent No. 5,972,396).

3. Copies of certain pages of that notebook, which were prepared prior to March 6, 1998, the filing date of the Ramsey et al. '122 patent, and which were contemporaneously signed by each of us, are attached to this declaration at Exhibit A.

4. These pages demonstrate that we had conceived the subject matter of the claims of this application prior to March 6, 1998. In particular, the attached handwritten notes reflect that we had conceived a snack food bag having a reclosable zipper and which was pinch-grip openable.

The notes state:

CONCEPT: M. DIERL & M. JURGOVAN  
FOR PINCH GRIP, EQUALIZE INTERNAL AND EXTERNAL  
OPENING FORCES TO ALLOW FOR BAG OPENING FROM  
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT  
STRIPPING OFF ZIPPER ON UNSUPPORTED/HINGED SIDE

5. Moreover, the sheets attached to the handwritten notes show drawings illustrating various configuration options (OPTION 1-OPTION 5) that were conceived and evaluated. The drawings show configurations substantially similar to drawings of this application (see, e.g., Figs 3-5 of this application). The attached hand-written notes make specific "Reference" to "Standard Film Option 3 on attached deck" (See encircled note on left side of page) . Referring, for example, to the drawing illustrating OPTION 3, on which reference characters corresponding to the reference characters used in this application have been added, the drawing shows the zipper [40] including male member [40-1] and female member [40-2], a male projection [43-1], a female socket [43-2], a left flange [41-1], a right flange [41-2], central sections [S] behind the socket [43-2] and the projection [43-1], and sealant layers [C].



6. Also, the five options outlined reflect configurations that support the claims of this application. With respect to OPTION 3, the following features of the bag, and their respective sizes, are listed progressing from the top of the bag to the bottom::

**STANDARD MATL (OPTION 3)**

- 1/2" seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal

7. In the parlance of Frito-Lay, the term "Standard Material" meant, at the time of development of the subject matter of this application (and still means today), a laminated film having outer and inner propylene layers with an intervening polyethylene layer. When a seal is formed with such a film, the opposing inner layers of the front and back walls are sealed together, and, when the seal is broken, the inner layers delaminate from the outer layers, so that the outer appearance of the bag is substantially intact. This is consistent with the film description provided in the present application, at for example, page 11, third full paragraph.

8. Independent claim 1 is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

Claim 1:

**In combination:**

**a) a flexible package having**

**a elastomeric front wall and an elastomeric rear wall;**

[OPTION 3 was snack food bag formed from "STANDARD MATL" (material), which, as described in ¶ 7 above, is a "flexible packaging having [an] elastomeric front wall and an elastomeric rear wall".]

**said front wall and said rear wall being sealed together at a top seal;**

[A "seal" at the top of the bag is a listed feature of OPTION 3. (see ¶6 above)]

**a first zipper part attached to an inside surface of said front wall and having a first engagement member facing said rear wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure illustrates that the zipper includes a male (i.e., a first engaging) part.]

**a second zipper part attached to an inside surface of said rear wall and having a second engagement member facing said front wall;**

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure illustrates that the zipper includes a female (i.e., a second engaging) part.]

**said first and second engagement members being engaged together;**

[The figure associated with OPTION 3 illustrates that the first and second engaging members are engaged with one another]

**said top seal being manually pinch-grip openable and said first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to said front and rear walls below said engagement members;**

[The attached hand written notes, as quoted in ¶ 4 above, make reference to pinch-grip opening from the product side, which would be below the engagement members (i.e., below the zipper).

Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfin" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**said front and rear walls having a sufficient strength to resist tearing and deformation under the application of said pinch-grip pulling force during pinch-grip opening; and**

[This is a reference to the relative sealing strength of the zipper as compared to the strength of the bag wall material to which the zipper components are secured. If the strength of the zipper is greater than the strength of the bag wall material, upon attempting to open the bag by a pinch-grip method, one or the other of the zipper components will tear away from its respective bag wall, rather than the two zipper components disengaging from one another. If one or the other zipper component tears away from its respective wall, the zipper can no longer be used to re-seal the bag. Thus, we recognized that the bag wall material must have a strength greater than the holding strength of the interengaged zipper components, so that it could withstand pinch grip opening. This is reflected in the statement quoted above in paragraph 4]

**b) a food product stored inside said package below said first and second engagement members.**

[The food product is stored in the "bag (body)" below the "zipper", i.e., there is no intervening seal between the zipper and the storage portion of the bag.]

9. Independent claim 17, as amended in the Amendment filed herewith, is set forth in bold below, with the support for each recited element set forth in brackets below the corresponding claim element.

**In combination:**

**a) a flexible package, including front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,**

[A snack food bag, such as the one we had conceived, inherently includes front and rear walls, as reflected in the separate male and female portions of the zipper to be attached to different respective walls of the bag. As explained above in paragraph 7, the "standard

material" of which, e.g., the bag of OPTION 3 was to be made, was (and still is) a laminated plastic film having at least one inner sealable layer and at least one outer wall layer.]

**a bottom seal formed between lower sides of said front and rear walls;**

[The list of features of the bag of OPTION 3, as quoted above in paragraph 6, includes a "bottom seal" below the "bag (body)" portion.]

**a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;**

[The list of features of the bag of OPTION 3, as quoted above in paragraph 6, includes a "seal" as the first (i.e., topmost) feature on the list. As explained above in paragraph 7, a seal using the "standard material" of which, e.g., the bag of OPTION 3 was to be made, would constitute a seal between the respective inner layers of the front and rear walls.]

**a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure associated with OPTION 3 illustrates that the zipper includes a male (i.e., a first engaging) part and that the male part has a widened base with three points of sealant: a central sealant section S and two sealant sections C.]

**said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;**

[A "zipper" is a listed feature of OPTION 3 below the seal. (see ¶6 above). The figure associated with OPTION 3 illustrates that the zipper includes a female (i.e., a second engaging) part and that the

female part has a widened base with two points of sealant: a central sealant section S and one sealant section C.]

**said first engagement member being engaged with said second engagement member;**

[The figure associated with OPTION 3 illustrates that the first and second engagement members are engaged with one another]

**said at least two points of sealant on said first zipper part being sealed to said inner layer of one of said front and rear walls and said at least two points of sealant on said second zipper part being sealed to the inner layer of the other of said front and rear walls;**

[As shown in the figure associated with OPTION 3, one of the zipper components is attached to one of the walls of the package, and the other component is attached to the other wall.]

**said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and**

[As explained above in paragraph 7, a seal between the inner layers of a standard material is broken by delamination of the inner seals. Furthermore, within the OPTION 3 description, under the heading "POSITIVES", it is stated that the bag of OPTION 3 permits "Pinch grip opening (usual for potato chips)". It is also stated that "No perfin" (i.e., no perforating) is necessary to permit the pinch-grip opening.]

**b) food product stored within said package between said closed zipper and said bottom seal.**

[The food product is stored in the "bag (body)" below the "zipper" (i.e., there is no intervening seal between the zipper and the storage portion of the bag) and above the "bottom seal".]

10. This current application is a continuation application from the parent application 09/079,382 (now U.S. Patent No. 5,972,396), having a filing date of May 15, 1998.

11. During the period from prior to March 6, 1998 until May 15, 1998, we diligently worked with our in-house and outside patent counsel to prepare and file the patent application.
12. Preparation of the patent application began before March 6, 1998.
13. In April and May of 1998, several telephone conferences were held with our outside patent counsel to discuss the invention and the patent application which was being prepared.
14. Marc Jurgovan had a telephone conference with outside patent counsel regarding the application on or about March 23, 1998.
15. On or about April 23, 1998, Marc Jurgovan communicated to outside patent counsel our comments regarding the application.
16. On or about May 14, 1998, Marc Jurgovan communicated with outside patent counsel regarding final revisions to the application.
17. A final draft of the application, along with an Assignment and Inventors' Declaration, was forwarded to us by outside patent counsel on May 14, 1998.
18. We reviewed the application and reviewed and signed the accompanying documents and returned them to patent counsel in Washington, D.C. for filing in the U.S. Patent and Trademark Office May 15, 1998.

**DECLARATION UNDER 37 C.F.R. § 1.68**

All statements made herein of our own knowledge are true and all statements made on information and belief are believed to be true. We understand that willful false statements and the like are punishable by fine or imprisonment, or both (18 U.S.C. 1001) and may jeopardize the validity of this application or any patent issuing thereon.

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Marc A. Jurgovan

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Date

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Martin B. Dierl

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Date

11. During the period from prior to March 6, 1998 until May 15, 1998, we diligently worked with our in-house and outside patent counsel to prepare and file the patent application.
12. Preparation of the patent application began before March 6, 1998.
13. In April and May of 1998, several telephone conferences were held with our outside patent counsel to discuss the invention and the patent application which was being prepared.
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Marc A. Jurgovan

10/10/2000

Date



Martin B. Dietl

10/10/2000

Date

# Exhibit A



DATE

SUBJECT

BAG RECLUSURES

PROJECT NO.

7578

3

NOTE

CONCEPTS PRESENTED WK OF

, MINIGRIP CONTACTED ON

(ART MALW)

CONCEPT

: ~~47~~ M. DIERL & M. JURGOVAN

FOR PINCH GRIP, EXUALIZE INTERNAL & EXTERNAL  
OPENING FORCES TO ALLOW FOR BAG OPENING FROM  
THE BOTTOM (INTERNAL (PRODUCT) SIDE WITHOUT  
STRIPPING OFF ZIPPER ON UNSUPPORTED (WINGED SIDE)

Reference

Premium (Peel Seal)  
options 2 on  
attached presentation  
deck

Standard Film  
Option 3 on  
attached deck

CURRENT : 2lb EXTERNAL (CONSUMER SIDE)  
8lb INTERNAL (PRODUCT SIDE)

PROPOSED : 2lb EXTERNAL  
2lb INTERNAL

TRY CONCEPT FOR PREMIUM (PEEL SEAL) FILM  
& STANDARD FILM TO PREVENT STRIPPING  
ZIPPER OFF WHEN OPENING PACKAGES USING  
PINCH GRIP METHOD

CONCEPT 2 : M. DIERL & MICHELE FOLEY

Reference  
options  
4 & 5  
on presentation  
deck

Run graphics inverted 180°, so that zipper is inverted on package  
- Withstands initial pinch grip, unknown with repeated opening  
from top of package (strips zipper?)

WITNESSED BY UNDERSTANDING

SIGNED

DATE

SIGNED

DATE

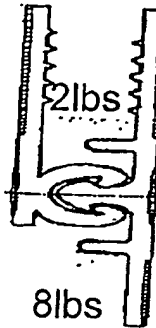
SUBJECT *LAH (ECLAPUB)*

PROJECT *J. 7578*

32

► PREMIUM MATERIAL (OPTION 1)

- 1/4" seal
- 1/16" perf
- 1/2" unsealed
- 1/4" sealed
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Traditional reclosable perf/peel system
- Meets current test market schedule

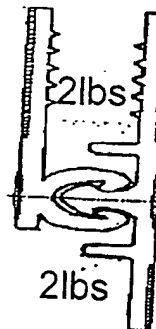
► NEGATIVES

- Must reeducate the consumer to open the bag the 1st time
- Needs perf (Tamper Evidence)
- Doubles film cost
- Increases length of bag the most
- No clear mat'l solution



► PREMIUM MATERIAL (OPTION 2)

- 1/4" seal
- 1/16" perf
- 1/2" unsealed
- 1/4" sealed
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Traditional reclosable perf/peel system
- Pinch grip opening (usual for potato chips)

► NEGATIVES

- Zipper may come apart when traveling over the former (tes)
- Pinch grip opening may pull off female side (Test week of)
- Needs perf (Tamper Evidence)
- Doubles film cost
- Increases length of bag the most
- No clear mat'l solution



WITNESSED AND UNDERSTOOD

SIGNED *North A. Davis*

SIGNED

DATE  
DATE

SIGNED

*North A. Davis*

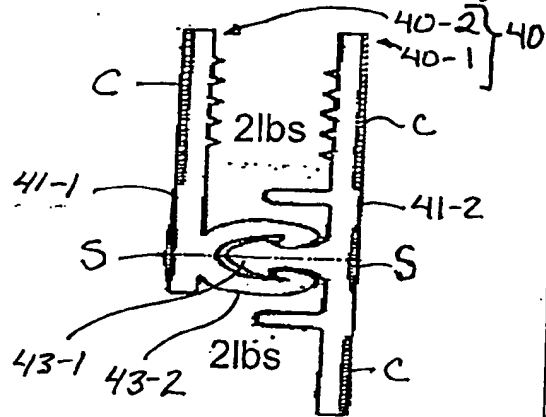
DATE

SUBJECT (12 RECLUSURES)

PROD. ST. NO. 7578

► STANDARD MATL (OPTION 3)

- 1/2" seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear material is available
- Uses 3/4 inch less material than options 1 & 2
- No perfling

► NEGATIVES

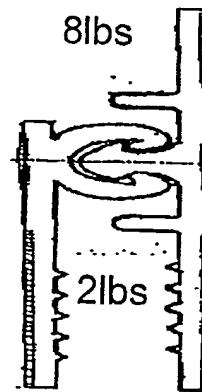
- Zipper may come apart when traveling over the former (test)
- Pinch grip opening may pull off female side (test)



► STANDARD MATL (OPTION 4)

Graphics Inverted

- 1/2" top seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



► POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear material is available
- Uses 3/4 inch less material than options 1 & 2
- No perfling

► NEGATIVES

- Can we educate the consumer to reuse the bag by pinch grip opening



WITNESSED AND UNDERSTOOD

SIGNED

SIGNED

DATE

DATE

SIGNED

DATE

DATE

SUBJECT

*Ph. Reclosures*

PROJECT NO.

*1578*

## ► STANDARD MATL (OPTION 5)

## Graphics Inverted

- 1/2" top seal
- 1/2" zipper flange Male/Female side
- 1/8" zipper
- 1/2" zipper flange Male side
- 20" bag (body)
- 1/2" bottom seal



## ► POSITIVES

- Uses standard material
- Pinch grip opening (usual for potato chips)
- Clear Material is available
- Uses 3/4 inch less material
- No perfering

## ► NEGATIVES

- Zipper may come apart when traveling over the former (tes.
- Pinch grip opening may pull off female side of zipper on reuse (te



## RECLOSURE OPTIONS SUMMARY

Options	Bag Length	Film Cost	Perf. Reg'd	Educate Consumer Initial Opening	Educate Consumer on Reopening	Needs New Zipper (Test Week)	Meets Timing	Clear Option Available
1								
2								
3	+	+	+					
4	+	+	+	+				
5	+	+	+	+	+			



WITNESSED AND UNDERSTOOD

SIGNED

*Martin D. Dierd*

DATE

DATE

SIGNED

DATE

*Mr. A. J. [Signature]*



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/372,646 08/12/99 JURGO, JR. M 914-1372DIV1

STEPHEN B PARKER  
ROTHWELL FISS ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

1862/0510

EXAMINER

BECKER, D

ART UNIT

PAPER NUMBER

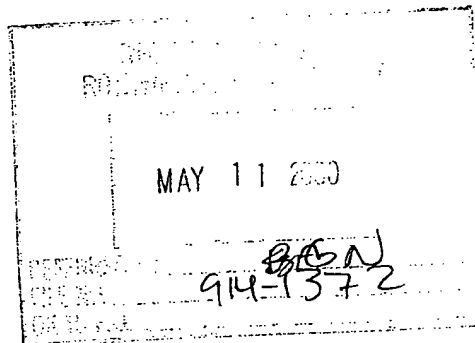
1751

DATE MAILED:

05/10/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks



PATENT  
5-12-00  
Due 8-10-00

# Office Action Summary

Application No.  
09/372,646

Applicant(s)

Jurgovan et al

Examiner

Drew Becker

Group Art Unit

1761

☒ Responsive to communication(s) filed on Dec 15, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 1-26 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 1-26 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☒ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 2 and 4

☐ Interview Summary, PTO-413

☒ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 1761

## DETAILED ACTION

### *Claim Objections*

1. Claim 3 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is not clear how a "heat/pressure/dwell seal" differs from a "heat, pressure, and dwell seal".

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 1, 5-6, and 8-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Ramsey et al [Pat. No. 6,030,122].

Ramsey et al teach a food package comprising front and rear walls made of polymeric material (column 3, lines 18-28), a top seal (Figure 3, 116), a zipper located beneath the top seal (Figure 3, 120), a male protrusion (Figure 3, 128), a female socket (Figure 3, 140), opening the

Art Unit: 1761

package by gripping it below the zipper and pulling the zipper and top seal apart (column 6, lines 45-59), and a snack food in the package (column 1, line 55).

*Claim Rejections - 35 USC § 103*

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2-4, 7, 13-21, and 23-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al as applied to claims 1, 5-6, and 8-10 above, in view of Thompson et al [Pat. No. 5,224,779].

Ramsey et al teach a food package comprising front and rear walls made of polymeric material (column 3, lines 18-28), a top seal (Figure 3, 116), a zipper located beneath the top seal (Figure 3, 120), a male protrusion (Figure 3, 128), a female socket (Figure 3, 140), opening the package by gripping it below the zipper and pulling the zipper and top seal apart (column 6, lines 45-59), and a snack food in the package (column 1, line 55). Ramsey et al do not mention the type of seal used at the top, the force required to open the package, or the use of a laminate as the polymeric material. Thompson et al teach a food package comprising a top seal above a zipper (Figures 2-3, 21-22 and 17-18), an opening force of 1.5-6.0 lb (column 3, line 5), heat seals (column 3, line 15), adhesive seals (column 3, line 52), peel seals (column 3, line 63), and



Art Unit: 1761

the use of a heat-sealable laminate (column 2, line 64). It would have been obvious to one of ordinary skill in the art to incorporate the opening force of Thompson et al into the invention of Ramsey et al since Thompson et al teach that this is a common range of opening force for packages as evidenced by their acceptance by Hustad and Griesbach (column 3, line 4). It would have been obvious to one of ordinary skill in the art to incorporate the laminate and seals of Thompson et al into the invention of Ramsey et al since Thompson et al teach the oxygen and moisture barriers which can be achieved (column 2, line 65) and since Ramsey et al is also directed to the packaging of foodstuffs.

6. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al as applied to claims 1, 5-6, and 8-10 above, in view of Cadwallader [Pat. No. 5,542,766]. Ramsey et al teach the above mentioned concepts. Ramsey et al do not recite the use of potato chips as the snack food. Cadwallader teach a food package comprising a zipper which holds potato chips (Figure 13, 27). It would have been obvious to one of ordinary skill in the art to incorporate the potato chips of Cadwallader into the invention of Ramsey et al since Ramsey et al teach the use of snack foods (column 1, line 55) and potato chips are a type of snack food which can be packaged in a bag as shown by Cadwallader (Figure 13).

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ramsey et al and Thompson et al as applied to claims 2-4, 7, 13-21, and 23-26 above, and further in view of Cadwallader.

Art Unit: 1761

Ramsey et al, Thompson et al, and Cadwallader teach the above mentioned concepts and are combined for the above mentioned reasons, in addition all the references are directed to food packages sealed by zippers.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Forman [Pat. No. 5,944,425] teach a food package having a zipper and top seal (Figure 17).


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew Becker whose telephone number is (703)-305-0300. The examiner can normally be reached on Monday-Thursday from 7:00 am to 4:00 pm and every other Friday from 7:00 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gabrielle Brouillette, can be reached on (703)-308-0756. The fax number for this Group is (703)-305-3602.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0651.

Drew Becker

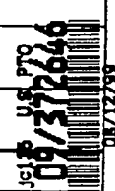
May 2, 2000

  
KEITH HENDRICKS  
PRIMARY EXAMINER

<b>Notice of References Cited</b>				Application No. <i>09/372646</i>		Applicant(s) <i>Jurgovan et al</i>	
				Examiner <i>Draw Becker</i>		Group Art Unit <i>1761</i>	Page <i>  </i> of <i>  </i>
<b>U.S. PATENT DOCUMENTS</b>							
*	DOCUMENT NO.	DATE	NAME	CLASS	SUBCLASS		
A	<i>6131248</i>	<i>10-2000</i>	<i>Tomic</i>	<i>24</i>	<i>304</i>		
B	<i>6065879</i>	<i>5-2000</i>	<i>Johnson</i>	<i>383</i>	<i>62</i>		
C	<i>3440696</i>	<i>4-69</i>	<i>Staller</i>	<i>24</i>	<i>201</i>		
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<b>FOREIGN PATENT DOCUMENTS</b>							
*	DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUBCLASS	
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<b>NON-PATENT DOCUMENTS</b>							
*	DOCUMENT (Including Author, Title, Source, and Pertinent Pages)					DATE	
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\* A copy of this reference is not being furnished with this Office action.  
(See Manual of Patent Examining Procedure, Section 707.05(a).)

Form 1449		U.S. Department of Commerce Patent and Trademark Office		ATTY. DOCKET NO. 0914-1372div1		SERIAL NO.	
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)				APPLICANT Marc A. Jurgovan et al.		GROUP	
				FILING DATE Herewith			



U.S. PATENT DOCUMENTS														
EXAMINER INITIAL	AA	DOCUMENT NUMBER							DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
		3	1	7	2	4	4	3					YES	NO
		3	1	7	2	4	4	3	03/09/65	S. Ausnit	150	3		
Feb		4	6	1	7	6	8	3	10/14/86	Christoff	383	63		
		4	6	5	5	8	6	2	04/07/87	Christoff et al.	156	66		
		4	6	9	1	3	7	2	09/01/87	Van Erden	383	63		
		4	7	0	9	3	9	8	11/24/87	Ausnit	383	63		
		4	7	8	2	9	5	1	11/08/88	Griesbach et al.	206	481		
		4	9	0	9	0	1	7	03/20/90	McMahon et al.	53	410		
		4	9	2	5	3	1	6	05/15/90	Van Erden et al.	383	61		
		4	9	7	6	8	1	1	12/11/90	Siebert	156	66		
		5	0	6	7	8	2	2	11/26/91	Wirth et al.	383	61		
MB		5	2	2	4	7	7	9	07/06/93	Thompson et al.	383	5		

FOREIGN PATENT DOCUMENTS															
EXAMINER INITIAL	AL	DOCUMENT NUMBER							DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION		
		YES	NO												

NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)													
EXAMINER	AR												
	AS												
	AT												

EXAMINER: <i>Drawbeel</i>	DATE CONSIDERED: <i>5-2-06</i>
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EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.



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Group 3700

Sheet 1 of 1

Form 1449		U.S. Department of Commerce Patent and Trademark Office		ATTY. DOCKET NO. 0914-1372DIV1		SERIAL NO. 09/372,646								
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)				APPLICANTS Marc A. JURGOVAN et al.										
				FILING DATE August 12, 1999		GROUP 3727								
U.S. PATENT DOCUMENTS														
EXAMINER INITIAL		DOCUMENT NUMBER							DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
DEB	AA	3	9	2	1	8	0	5	11/25/75	Compere	206	532		
	AB	4	6	9	1	3	7	3	09/01/87	Ausnit	<del>383</del>	<del>63</del>		
	AC	5	2	2	4	7	7	9	07/06/93	Thompson et al.	383	5		
	AD	5	4	7	0	1	5	6	11/28/95	May	383	210		
	AE	5	5	4	2	7	6	6	08/06/96	Cadwallader	383	62		
	AF													
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	AH													
	AI													
	AJ													
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FOREIGN PATENT DOCUMENTS														
		DOCUMENT NUMBER							DATE	COUNTRY	CLASS	SUBCLASS	TRANSLATION YES NO	
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	AN													
	AO													
	AP													
NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)														
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	AT													
EXAMINER		Drew Beel							DATE CONSIDERED 5-2-08					
EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.														

Form 1449		U.S. Department of Commerce Patent and Trademark Office				ATTY. DOCKET NO. 0914-1372div1		SERIAL NO.						
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)						APPLICANT Marc A. Jurgovan et al.								
						FILING DATE Herewith		GROUP						
U.S. PATENT DOCUMENTS														
EXAMINER INITIAL		DOCUMENT NUMBER							DATE	NAME	CLASS	SUBCLASS	FILING DATE IF APPROPRIATE	
DEB	BA	5	2	4	2	5	1	6	09/07/93	Custer et al.	176	66		
	BB	5	3	3	0	2	6	9	07/19/94	Kamada et al.	383	210		
	BC	5	5	5	7	9	0	7	09/24/96	Malin et al.	53	139.2		
	BD	5	5	5	8	6	1	3	09/24/96	Tilman et al.	493	214		
	BE	5	5	9	2	8	0	2	01/14/97	Malin et al.	53	133.4		
	BF	5	6	8	9	9	3	5	11/25/97	Derkach et al.	53	412		
DEB	BG	5	7	4	9	6	5	8	05/12/98	Kettner	383	204		
	BH													
	BI													
	BJ													
	BK													
FOREIGN PATENT DOCUMENTS														
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	BL													
	BM													
	BN													
	BO													
	BP													
NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)														
	BR													
	BS													
	BT													
EXAMINER <i>Draw Bed</i>					DATE CONSIDERED <i>5-2-00</i>									
EXAMINER: Initial if reference considered, whether or not citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.														

NOTICE OF DRAFTSPERSON'S  
PATENT DRAWING REVIEWThe drawing(s) filed (insert date) 8/12/99 are:A. ☒ approved by the Draftsperson under 37 CFR 1.84 or 1.152.B. ☐ objected to by the Draftsperson under 37 CFR 1.84 or 1.152 for the reasons indicated below. The Examiner will require submission of new, corrected drawings when necessary. Corrected drawing must be submitted according to the instructions on the back of this notice.

<p>1. DRAWINGS. 37 CFR 1.84(a): Acceptable categories of drawings: Black ink. Color. Color drawings are not acceptable until petition is granted. Fig(s) _____ Pencil and non black ink not permitted. Fig(s) _____</p> <p>2. PHOTOGRAPHS. 37 CFR 1.84(b) 1 full-tone set is required. Fig(s) _____ Photographs not properly mounted (must use bristol board or photographic double-weight paper). Fig(s) _____ Poor quality (half-tone). Fig(s) _____</p> <p>3. TYPE OF PAPER. 37 CFR 1.84(e) Paper not flexible, strong, white, and durable. Fig(s) _____ Erasures, alterations, overwritings, interlineations, folds, copy machine marks not accepted. Fig(s) _____ Mylar, velum paper is not acceptable (too thin). Fig(s) _____</p> <p>4. SIZE OF PAPER. 37 CFR 1.84(f): Acceptable sizes: 21.0 cm by 29.7 cm (DIN size A4) 21.6 cm by 27.9 cm (8 1/2 x 11 inches) All drawing sheets not the same size. Sheet(s) _____ Drawings sheets not an acceptable size. Fig(s) _____</p> <p>5. MARGINS. 37 CFR 1.84(g): Acceptable margins: Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm SIZE: A4 Size Top 2.5 cm Left 2.5 cm Right 1.5 cm Bottom 1.0 cm SIZE: 8 1/2 x 11 Margins not acceptable. Fig(s) _____ Top (T) _____ Left (L) _____ Right (R) _____ Bottom (B) _____</p> <p>6. VIEWS. 37 CFR 1.84(h) REMINDER: Specification may require revision to correspond to drawing changes. Partial views. 37 CFR 1.84(h)(2) Brackets needed to show figure as one entity. Fig(s) _____ Views not labeled separately or properly. Fig(s) _____ Enlarged view not labeled separately or properly. Fig(s) _____</p> <p>7. SECTIONAL VIEWS. 37 CFR 1.84(h)(3) Hatching not indicated for sectional portions of an object. Fig(s) _____ Sectional designation should be noted with Arabic or Roman numbers. Fig(s) _____</p>	<p>8. ARRANGEMENT OF VIEWS. 37 CFR 1.84(i) Words do not appear on a horizontal, left-to-right fashion when page is either upright or turned so that the top becomes the right side, except for graphs. Fig(s) _____</p> <p>9. SCALE. 37 CFR 1.84(k) Scale not large enough to show mechanism without crowding when drawing is reduced in size to two-thirds in reproduction. Fig(s) _____</p> <p>10. CHARACTER OF LINES, NUMBERS, &amp; LETTERS. 37 CFR 1.84(l) Lines, numbers &amp; letters not uniformly thick and well defined, clean, durable, and black (poor line quality). Fig(s) _____</p> <p>11. SHADING. 37 CFR 1.84(m) Solid black areas pale. Fig(s) _____ Solid black shading not permitted. Fig(s) _____ Shade lines, pale, rough and blurred. Fig(s) _____</p> <p>12. NUMBERS, LETTERS, &amp; REFERENCE CHARACTERS. 37 CFR 1.84(p) Numbers and reference characters not plain and legible. Fig(s) _____ Figure legends are poor. Fig(s) _____ Numbers and reference characters not oriented in the same direction as the view. 37 CFR 1.84(p)(1) Fig(s) _____ English alphabet not used. 37 CFR 1.84(p)(2) Fig(s) _____ Numbers, letters and reference characters must be at least .32 cm (1/8 inch) in height. 37 CFR 1.84(p)(3) Fig(s) _____</p> <p>13. LEAD LINES. 37 CFR 1.84(q) Lead lines cross each other. Fig(s) _____ Lead lines missing. Fig(s) _____</p> <p>14. NUMBERING OF SHEETS OF DRAWINGS. 37 CFR 1.84(i) Sheets not numbered consecutively, and in Arabic numerals beginning with number 1. Sheet(s) _____</p> <p>15. NUMBERING OF VIEWS. 37 CFR 1.84(n) Views not numbered consecutively, and in Arabic numerals, beginning with number 1. Fig(s) _____</p> <p>16. CORRECTIONS. 37 CFR 1.84(w) Corrections not made from prior PTO-948 dated _____</p> <p>17. DESIGN DRAWINGS. 37 CFR 1.152 Surface shading shown not appropriate. Fig(s) _____ Solid black shading not used for color contrast. Fig(s) _____</p>
<p>COMMENTS</p>	

REVIEWER JLDATE 10/15/99

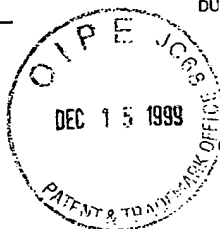
TELEPHONE NO. \_\_\_\_\_

ATTACHMENT TO PAPER NO. \_\_\_\_\_

THE PATENT OFFICE'S STAMP HEREON IS ACKNOWLEDGED.  
RECEIPT OF THE FOLLOWING IN REGARD TO:

0914-1372div1  
ATTORNEY DOCKET NO. \_\_\_\_\_  
SERIAL NO. 09/372,646  
FILED August 12, 1999  
APPLICANT/PATENTEE Marc A. JURGOVAN  
et al.  
ATTORNEY/TYPIST INITIALS BGN:vpb  
DUE DATE December 15, 1999

1. Information Disclosure Statement
2. PTO Form 1449 with 5 references





0914-1372div1  
BGN:vpb

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
 )  
Marc A. JURGOVAN et al. )  
 )  
Serial No. 09/372,646 ) Examiner: Not yet assigned  
 )  
Filed: August 12, 1999 ) Group Art Unit: 3727  
 )  
For: FLEXIBLE PACKAGE HAVING )  
A RE-CLOSABLE ZIPPER )

INFORMATION DISCLOSURE STATEMENT

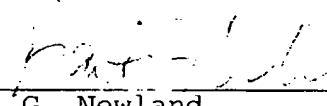
Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Under the provisions of 37 C.F.R. §§ 1.56, 1.97 and 1.98,  
Applicants submit herewith copies of publications that the Office  
may wish to consider in examination of the subject application.  
The publications are listed on the attached form PTO-1449.

Respectfully submitted,

By

  
Bart G. Newland  
Attorney for Applicants  
Registration No. 31,282  
ROTHWELL, FIGG, ERNST & KURZ, p.c.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040

Form 1449		U.S. Department of Commerce Patent and Trademark Office		ATTY. DOCKET NO. 0914-1372DIV1		SERIAL NO. 09/372,646	
LIST OF MATERIALS CITED BY APPLICANT (Use several sheets if necessary)				APPLICANTS Marc A. JURGOVAN et al.			
				FILING DATE August 12, 1999		GROUP 3727	

U.S. PATENT DOCUMENTS																
EXAMINER INITIAL		DOCUMENT NUMBER								DATE	NAME	CLASS	SUBCLASS	FILING DATE / APPROPRIATE		
	AA	3	9	2	1	8	0	5	11/25/75	Compere						
	AB	4	6	9	1	3	7	3	09/01/87	Ausnit						
	AC	5	2	2	4	7	7	9	07/06/93	Thompson et al.						
	AD	5	4	7	0	1	5	6	11/28/95	May						
	AE	5	5	4	2	7	6	6	08/06/96	Cadwallader						
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FOREIGN PATENT DOCUMENTS																
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NON-PATENT DOCUMENTS (Including Author, Title, Date, Pertinent Pages, Etc.)		
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EXAMINER	DATE CONSIDERED
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FILING RECEIPT



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
ASSISTANT SECRETARY AND COMMISSIONER  
OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	GRP ART UNIT	FIL FEE REC'D	ATTORNEY DOCKET NO.	DRWGS	TOT CL	IND CL
09/372,646	08/12/99	3727	\$868.00	914-1372DIV1	7	26	2

STEPHEN B PARKER  
ROTHWELL FIGG ERNST & KURZ PC  
SUITE 701 EAST TOWER  
555 THIRTEENTH ST NW  
WASHINGTON DC 20004

Receipt is acknowledged of this nonprovisional Patent Application. It will be considered in its order and you will be notified as to the results of the examination. Be sure to provide the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION when inquiring about this application. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. If an error is noted on this Filing Receipt, please write to the Office of Initial Patent Examination's Customer Service Center. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts of Application" ("Missing Parts Notice") in this application, please submit any corrections to this Filing Receipt with your reply to the "Missing Parts Notice." When the PTO processes the reply to the "Missing Parts Notice," the PTO will generate another Filing Receipt incorporating the requested corrections (if appropriate).

Applicant(s) MARC A. JURGOVAN, PLANO, TX; MARTIN B. DIERL, ALLEN, TX.

CONTINUING DATA AS CLAIMED BY APPLICANT-

THIS APPLN IS A CON OF 09/079,382 05/15/98

IF REQUIRED, FOREIGN FILING LICENSE GRANTED 08/31/99

TITLE

FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER

PRELIMINARY CLASS: 383

RECEIVED/BOOKING  
ROTHWELL FIGG ERNST & KURZ

SEP 3 - 1999

914-1372 DIV1

DATA ENTRY BY: PERRY, REGINA

TEAM: 02 DATE: 09/01/99

\*\*\*\*\*

(See reverse for new important information)

NEW APPLICATIONS ONLY

THE PATENT OFFICE'S STAMP HEREIN IS ACKNOWLEDGEMENT

BY IT OF RECEIPT ON THE DATE STAMPED OF Utility Patent

Application (Divisional of S/N 09/079,382) Fee Transmittal

DOCKET NO. 914-1372 Div 1

APPLICANT: Jurgovan et al.

TITLE: Flexible Packaging Having....

NO. OF SPECIFICATION PAGES 30 NO. OF CLAIMS 24

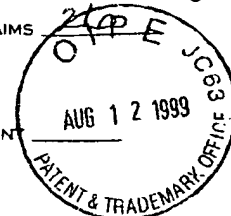
SHEETS OF DRAWINGS 7

OATH \_\_\_\_\_ OR DECLARATION X

FEE \$ 868 CHECK ✓ OR DEPOSIT ACCOUNT \_\_\_\_\_

TYPIST'S INITIALS VPB

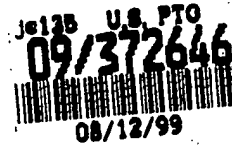
ATTORNEY'S INITIALS SBP



Preliminary Amendment  
Declaration/P.D.A.  
Submission of  
Formal Drawings  
Information  
Disclosure  
Statement  
with 1449  
w/Refs.

FOR SERIAL NUMBER

NEW APPLICATIONS ONLY



THE PATENT OFFICE'S STAMP HEREIN IS ACKNOWLEDGEMENT

BY IT OF RECEIPT ON THE DATE STAMPED OF Utility Patent Application  
(Divisional of S/N 09/079,382) Fee Transmittal, Preliminary

DOCKET NO. 914-1372 DIV 1

APPLICANT: Jurgovan et al.

TITLE: Flexible Package Having...

NO. OF SPECIFICATION PAGES 30 NO. OF CLAIMS 26

SHEETS OF DRAWINGS 7

OATH OR DECLARATION X

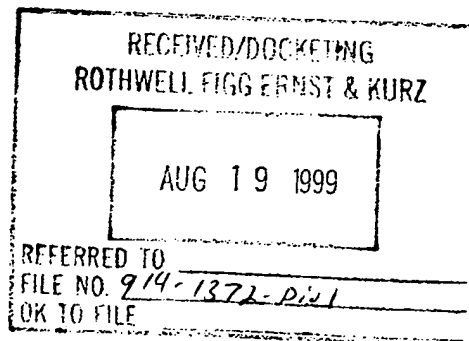
FEE \$ 808 CHECK X OR DEPOSIT ACCOUNT

TYPIST'S INITIALS VPB

ATTORNEY'S INITIALS SBP

Amendment,  
Declaration (P.O.A.),  
Submission of  
Formal Drawings  
Information  
Disclosure  
Statement  
with  
References

588



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	)	BOX ISSUE FEE
	)	
Marc A. Jurgovan et al.	)	
	)	
Serial No. Divisional of U.S.	)	Examiner: (To be assigned)
Serial No. 09/079,382	)	
	)	
Filed: Herewith	)	Group Art Unit:
	)	
For: FLEXIBLE PACKAGE HAVING	)	
A RE-CLOSABLE ZIPPER	)	

SUBMISSION OF FORMAL DRAWINGS

Assistant Commissioner for Patents  
Washington, D.C. 20231

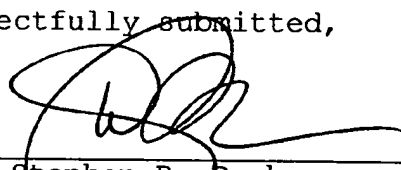
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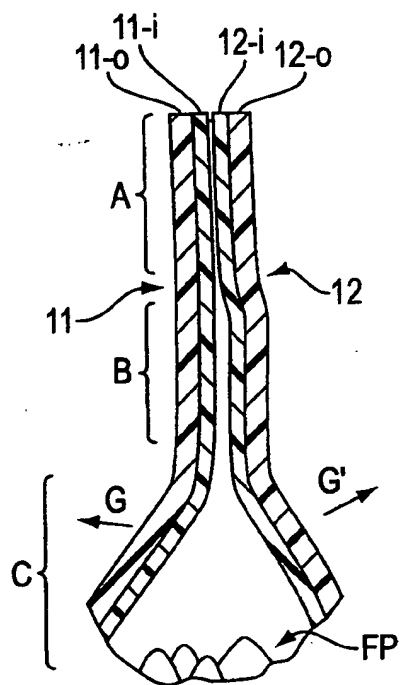
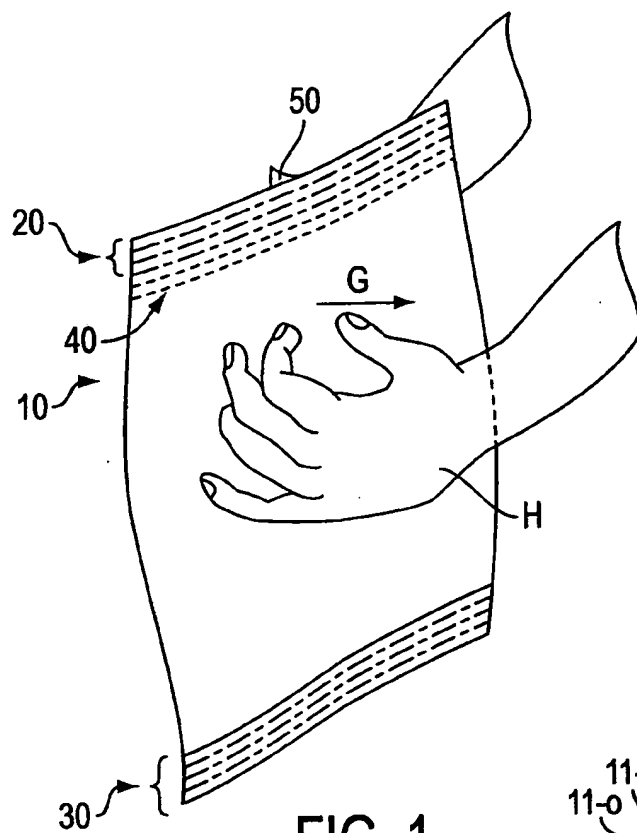
Attached hereto are seven (7) sheet of formal drawings in  
the above-referenced application.

Please charge any fee or credit any overpayment pursuant to  
37 CFR 1.16 or 1.17 to Deposit Account No. 02-2135.

Respectfully submitted,

By

  
\_\_\_\_\_  
Stephen B. Parker  
Attorney for Applicant  
Registration No. 36,631  
ROTHWELL, FIGG, ERNST & KURZ, P.C.  
Suite 701-E, 555 13th Street, N.W.  
Washington, D.C. 20004  
Telephone: (202) 783-6040



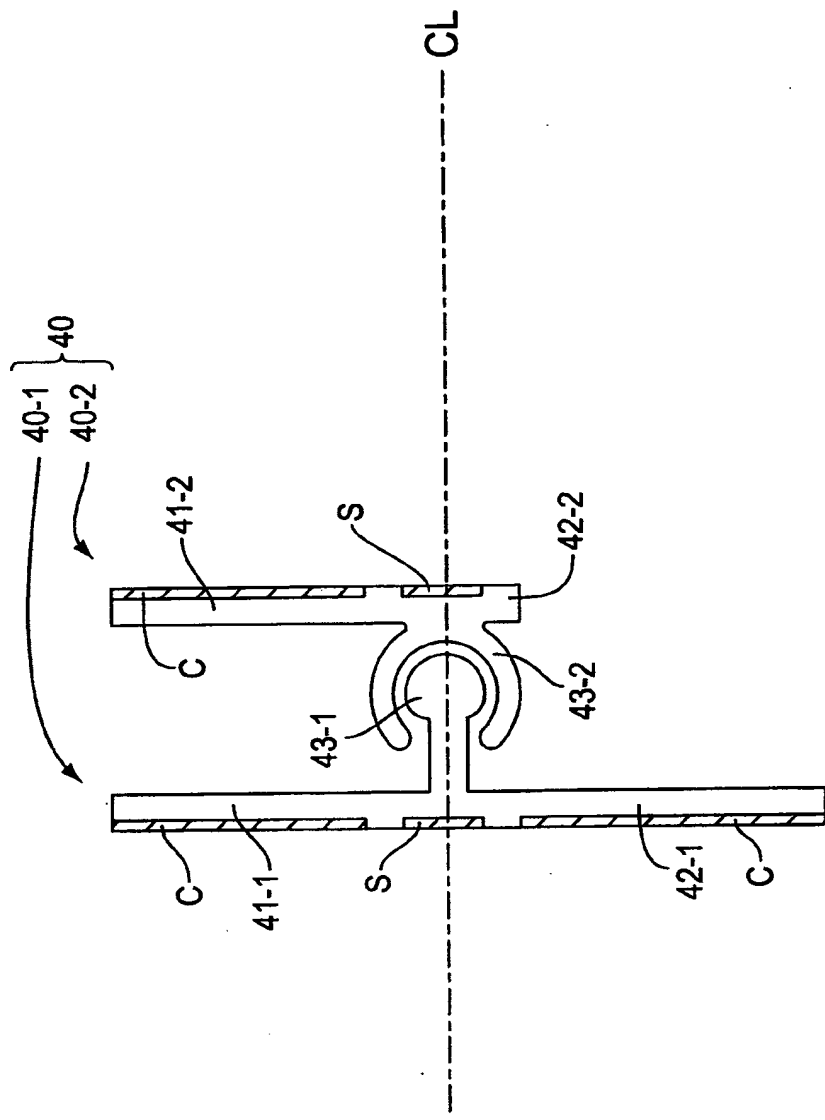


FIG. 3



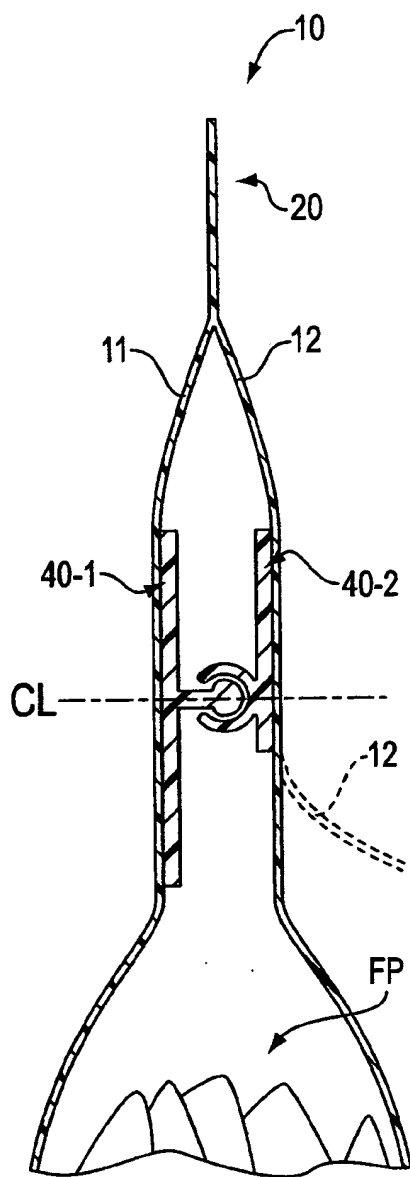


FIG. 4

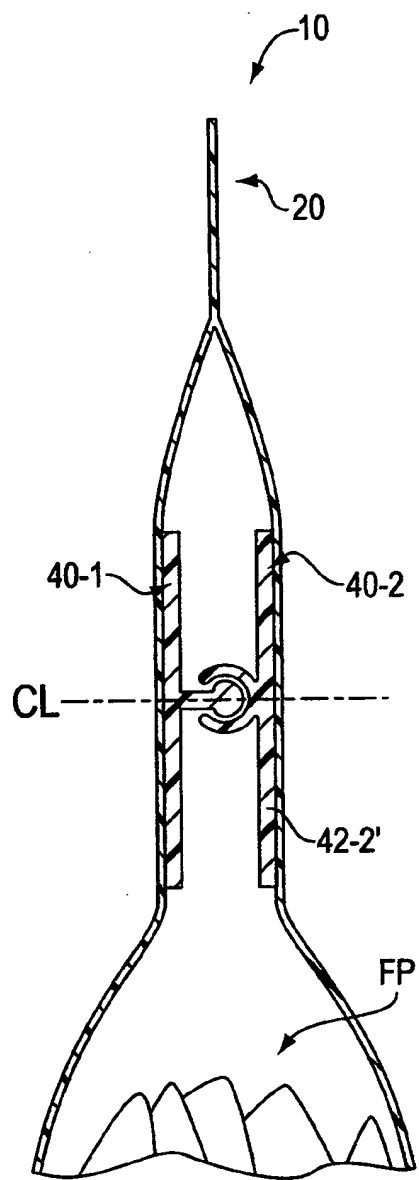


FIG. 5

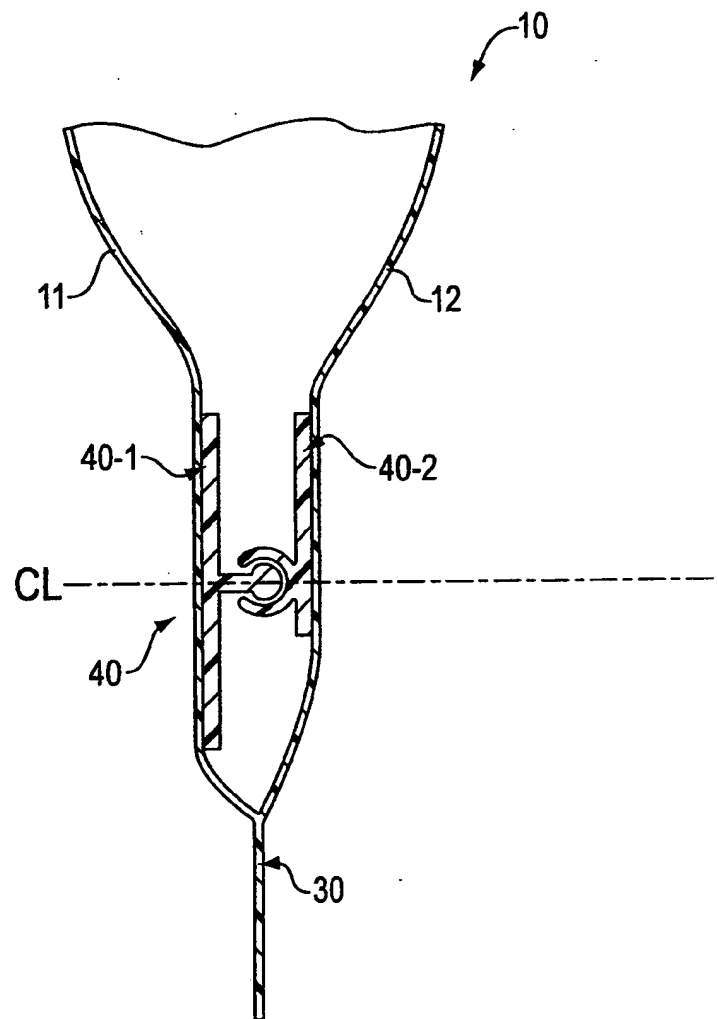


FIG. 6

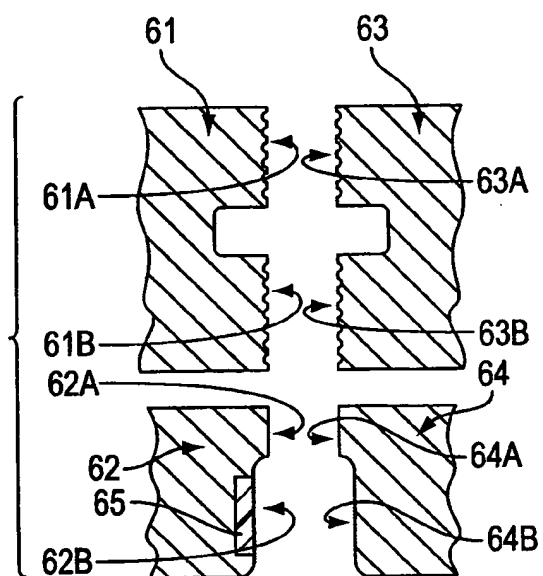


FIG. 7

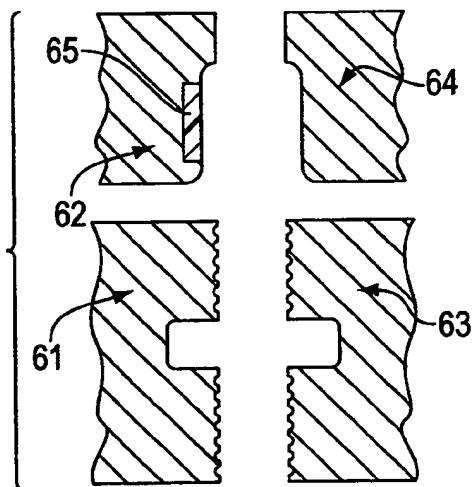


FIG. 8

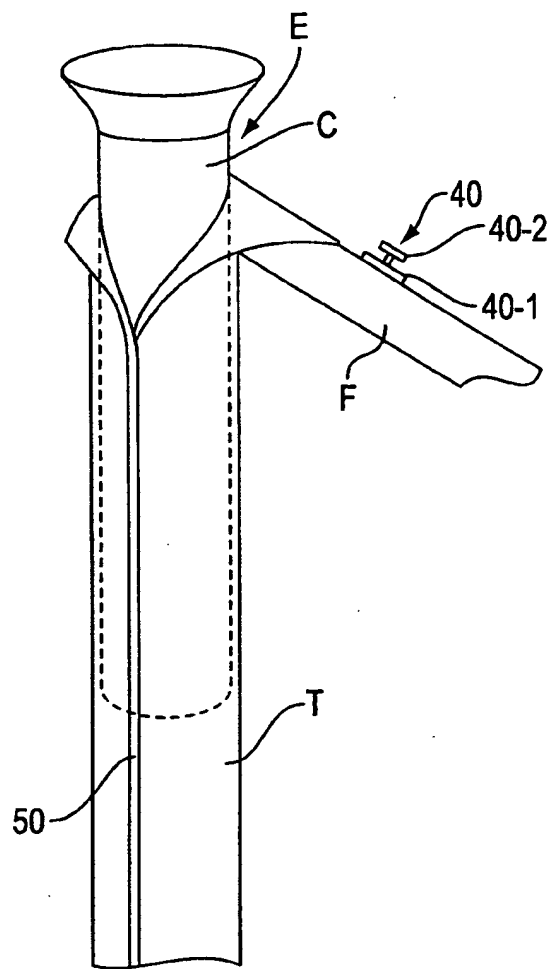


FIG. 9

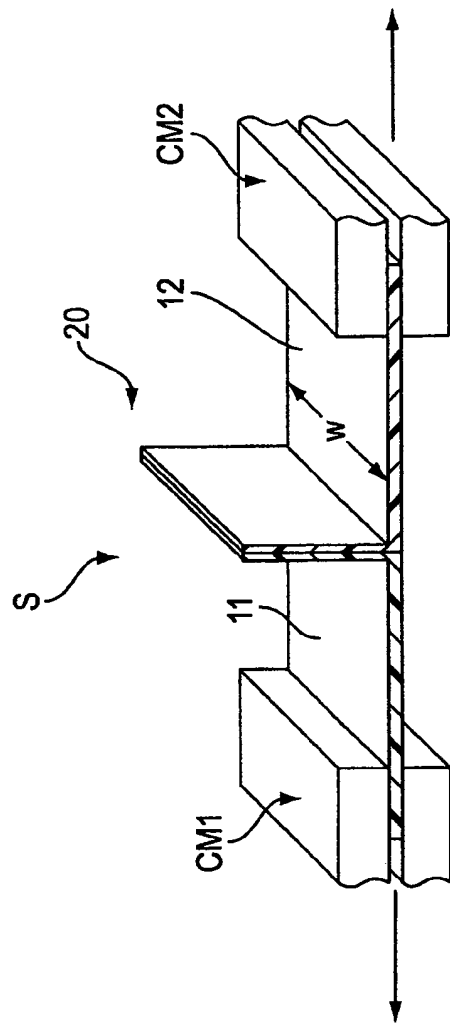


FIG. 10

<b>UTILITY PATENT APPLICATION TRANSMITTAL</b>  <small>(Only for new nonprovisional applications under 37 CFR 1.53(b))</small>	Attorney Docket No.	914-1372div1	Total Pages	32
	First Named Inventor or Application Identifier			
	Marc A. JURGOVAN et al.			
	Express Mail Label No.			

<p style="text-align: center;"><b>APPLICATION ELEMENTS</b></p> <p>See MPEP chapter 600 concerning utility patent application contents.</p> <p>1. <input checked="" type="checkbox"/> Fee Transmittal Form  <small>(Submit an original, and a duplicate for fee processing)</small></p> <p>2. <input checked="" type="checkbox"/> Specification Total pages [30]  <small>(preferred arrangement set forth below)</small></p> <ul style="list-style-type: none"> <li>- Descriptive title of the invention</li> <li>- Cross references to Related Applications</li> <li>- Statement Regarding Fed sponsored R&amp;D</li> <li>- Reference to Microfiche Appendix</li> <li>- Background of the Invention</li> <li>- Brief Summary of the Invention</li> <li>- Brief Description of the Drawings</li> <li>- Detailed Description</li> <li>- Claims</li> <li>- Abstract of the Disclosure</li> </ul> <p>3. <input checked="" type="checkbox"/> Drawing(s) (35 USC 113) (Total Sheets) [7]</p> <p>4. <input checked="" type="checkbox"/> Oath or Declaration (Total Pages) [3]</p> <p style="padding-left: 20px;">a. <input type="checkbox"/> Newly executed (original or copy)</p> <p style="padding-left: 20px;">b. <input checked="" type="checkbox"/> Copy from a prior application  <small>(37 CFR 1.63(d))</small>  <small>(for continuation/divisional with Box 17 completed)</small></p> <p style="text-align: center;"><b>[Note Box 5 below]</b></p> <p style="padding-left: 20px;"><input type="checkbox"/> <b>DELETION OF INVENTOR(S)</b>  Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) and 1.33(b)</p> <p>5. <input checked="" type="checkbox"/> Incorporation by Reference (useable if Box 4b is checked) The entire disclosure of the prior application, from which a copy of the oath or declaration is supplied under Box 4b, is considered as being part of the disclosure of the accompanying application and is hereby incorporated by reference therein.</p>	<p>6. <input type="checkbox"/> Microfiche Computer Program (Appendix)</p> <p>7. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)</p> <p style="padding-left: 20px;">a. <input type="checkbox"/> Computer Readable Copy</p> <p style="padding-left: 20px;">b. <input type="checkbox"/> Paper Copy (identical to computer copy)</p> <p style="padding-left: 20px;">c. <input type="checkbox"/> Statement verifying identity of above copies</p> <p style="text-align: center;"><b>ACCOMPANYING APPLICATION PARTS</b></p> <p>8. <input type="checkbox"/> Assignment Papers (cover sheet &amp; document(s))</p> <p>9. <input type="checkbox"/> 37 CFR 3.73(b) Statement  <small>(when there is an assignee)</small></p> <p style="padding-left: 20px;"><input type="checkbox"/> Power of Attorney</p> <p>10. <input type="checkbox"/> English Translation Document <small>(if applicable)</small></p> <p>11. <input checked="" type="checkbox"/> Information Disclosure Statement / PTO 1449</p> <p style="padding-left: 20px;"><input checked="" type="checkbox"/> Copies of IDS Citations</p> <p>12. <input checked="" type="checkbox"/> Preliminary Amendment</p> <p>13. <input checked="" type="checkbox"/> Return Receipt Postcard (MPEP 503)  <small>(Should be specifically itemized)</small></p> <p>14. <input type="checkbox"/> Small Entity Statement(s)</p> <p style="padding-left: 20px;"><input type="checkbox"/> Statement Filed in prior application, Status still proper and desired</p> <p>15. <input type="checkbox"/> Certified Copy of Priority Document(s).  <small>(if foreign priority is claimed)</small></p> <p>16. <input checked="" type="checkbox"/> Other: <i>Submission of Formal Drawings and 7 sheets of formal drawings.</i></p>
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17. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information:

☐ Continuation ☒ Divisional ☐ Continuation-in-part (CIP) of prior application No.: *09/079382*

**18. CORRESPONDENCE ADDRESS**

☐ Customer Number or Bar Code Label or ☒ Correspondence address below  
(Insert Customer No. or Attach bar code label here)

Name	Stephen B. Parker, Reg. No. 36,631				
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City	Washington	State	D.C.	Zip Code	20004
Country	U.S.A.	Telephone	202-783-6040	Fax	202-783-6031

<b>FEE TRANSMITTAL</b>  <b>(Large Entity)</b>		Complete if Known	
		Application Number	
		Filing Date	Herewith
		First Named Inventor	Jurgovan et al.
		Group Art Unit	
Examiner Name			
Total Amount of Payment	(\$) <b>868.00</b>	Attorney Docket Number	0914-1372div1

**METHOD OF PAYMENT (check one)**

1. ☐ The Commissioner is hereby authorized to charge indicated fees and credit any overpayment to Deposit Account Number 02-2135 in the name of Rothwell, Figg, Ernst & Kurz

☐ Charge any Additional Fee Required Under 37 CFR 1.16 and 1.17

☐ Charge for the Issue Fee Set in 37 CFR 1.18 at the Mailing of the Notice of Allowance

2. ☒ Payment Enclosed: Check

**FEE CALCULATION**
**1. FILING FEE**

Fee Description	Fee Code	Fee Paid
<input checked="" type="checkbox"/> Utility Filing Fee	101	760
<input type="checkbox"/> Design Filing Fee	106	310
<input type="checkbox"/> Plant Filing Fee	107	480
<input type="checkbox"/> Reissue Filing Fee	108	760
<input type="checkbox"/> Provisional Filing Fee	114	150

**SUBTOTAL** \$

**2. CLAIMS**

	Fee from Extra	below		Fee Paid
Total Claims	26 - 20 = 6	x \$18	=	\$108.00
Independent Claims	2 - 3 =	x 78	=	
Multiple Dependent Claims		+ 260	=	

**SUBTOTAL** \$ 868.00 \* Reduced by Basic Filing Fee Paid

**FEE CALCULATION (continued)**
**3. ADDITIONAL FEES**

Fee Description	Fee Code	Fee Paid
<input type="checkbox"/> Surcharge - late filing fee or oath	105	130
<input type="checkbox"/> Surcharge - late provisional filing fee or cover sheet	127	50
<input type="checkbox"/> Non-English specification	139	130
<input type="checkbox"/> For filing a request for reexamination	147	2,520
<input type="checkbox"/> Requesting publication of SIR prior to Examiner action	112	920
<input type="checkbox"/> Requesting publication of SIR after Examiner action	113	1,840*
<input type="checkbox"/> Extension for reply within first month	115	110
<input type="checkbox"/> Extension for reply within second month	116	380
<input type="checkbox"/> Extension for reply within third month	117	870
<input type="checkbox"/> Extension for reply within fourth month	118	1,360
<input type="checkbox"/> Extension for reply within fifth month	128	1,850
<input type="checkbox"/> Notice of Appeal	119	300
<input type="checkbox"/> Filing a brief in support of an appeal	120	300
<input type="checkbox"/> Request for Oral Hearing	121	260
<input type="checkbox"/> Petition to institute a public use proceeding	138	1,510
<input type="checkbox"/> Petition to revive -unavoidable	140	110*
<input type="checkbox"/> Petition to revive - unintentional	141	1,210
<input type="checkbox"/> Utility issue fee (or reissue)	142	1,210*
<input type="checkbox"/> Design issue fee	143	430
<input type="checkbox"/> Plant issue fee	144	580
<input type="checkbox"/> Petitions to the Commissioner	122	130
<input type="checkbox"/> Petitions related to provisional applications	123	50
<input type="checkbox"/> Submission of Information Disclosure Statement	126	240
<input type="checkbox"/> Recording each patent assignment per property (times number of properties)	581	40
<input type="checkbox"/> Filing a submission after final rejection (37 CFR 1.129(a))	146	760
<input type="checkbox"/> For each additional invention to be examined (37 CFR 1.129(b))	149	760

Other fee (specify)

☐

**SUBTOTAL** \$

SUBMITTED BY		Complete (if applicable)	
NAME AND REG. NUMBER	Stephen B. Parker, Reg. No. 36,631		
SIGNATURE	DATE	DEPOSIT ACCOUNT USER ID	02-2135

ROTHWELL, FIGG, ERNST & KURZ

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# **FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER**

## **BACKGROUND OF THE INVENTION**

### **1. Field of the Invention**

The present invention relates to flexible packages having means for selectively re-closing the packages after their initial opening. Most particularly, the present invention provides a unique re-closable flexible package that is highly consumer-friendly -- especially with snack foods such as potato chips, corn chips and the like.

### **2. Description of the Related Art**

The present invention is an improvement over existing flexible packages, including those currently used by the present assignee for containing snack foods such as Lays® potato chips, Tostitos® tortilla chips and the like. Packages for such products usually have top and bottom end seals that are formed by heat sealing and are opened by "pinch gripping" (see FIG. 1) the sides of the package and pulling outward to break the end seal for access therein. These common packages, however, do not contain means to re-close the package after the initial opening of the end seals. Because the heat seal has been destroyed, the most common way of re-closing the package is to fold-over the open end and apply a clip to secure the folded portion.

Flexible packages having re-closable zippers are known in certain applications. A variety of food products can be purchased in pre-sealed flexible packages having re-closable zippers for re-closing the food product after the initial opening.

Although a number of packages with re-closable zippers are known, the existing packages have a number of drawbacks. For example, these prior packages typically must be initially opened using two distinct steps. First, a heat seal must be broken by cutting the package with scissors or by removing a tear-away, perforated strip. The re-closable zipper closure is then opened

in a distinct second step. This substantially reduces the consumer appeal of the packages and makes the packages undesirable for a variety of products, such as for snack food chips and the like.

A preferred process of packaging snack food products, such as potato chips, tortilla chips and the like, inside plastic flexible packages is known in the art as a "vertical form/fill/seal process." In this process, as seen in FIG. 9, a length of plastic film F is formed into a vertical tube T around a product delivery cylinder C, the food product is delivered into the vertical tube through the cylinder, the vertical tube is vertically sealed along its length to form a back seal 50 and is transversely sealed to form top and bottom seals delineating individual packages, and the individual packages are cut from the vertical tube.

Providing a zipper closure to a package in a vertical form/fill/seal apparatus presents a number of difficulties. Typically, in non-vertical form/fill/seal apparatuses, a zipper is attached to an elongated moving plastic film lengthwise to the direction of travel of the film. To attach a zipper to a package in a vertical form/fill/seal apparatus, however, the zipper must be attached to the film transverse to the travel direction of the film, in order to create a package with a zipper sealed near the top end of the package.

U.S. Patent No. 4,909,017 (assigned to Minigrip, Inc.), the entire disclosure of which is incorporated herein by reference, shows a vertical form fill process which fills product into a reclosable package having a zipper or fastener portion 34 and a pilfer-evident seal 35 above the fastener. In summary, a film is fed over shaping shoulders 21 and around a vertical forming and filling tube 24. Welding bars 22 and 23 seal edges of the film

together to form a tube with a vertical seam. Welding bars 27 and 28 form a lower seal 29, and product is dropped into the vertical tube 24. The fastener strips slide over the tube 24 with only one part fixed to one side of the film tube. The fastener strips are later sealed to both sides of the film by the bars 27 and 28.

As noted on col. 4, lines 29-31, "[the] seam [35] is a pilfer-evident closure for the package and the seam can be removed cut off [sic] the tip of the package before the package is to be used." Thus, the packages require a distinct two-step opening process.

U.S. Patent No. 4,617,683, (assigned to Minigrip, Inc.), shows another vertical form fill process which fills product into a reclosable package having a top seal 42 and a reclosable zipper or fastener 27 inside of the package. As noted on col. 6, lines 30, et seq.,

[i]n the finished fully sealed package[,] the profiles 52 may remain separated as shown in FIG. 2 until the top end or mouth of the package has been opened as shown in FIG. 3 for access to contents in the package, and then the package can be closed by interengagement of the fastener profiles as shown in FIG. 3. Opening of the package may be effected either by pulling the seal at the top end of the package open, or by severing the top end of the package along a line 58 between the seal 42 and the reclosable fastener 27 ....

(emphasis added). Among other disadvantages of the '683 patent, when the top end of the package must be severed to be opened, as noted above, this greatly inhibits consumer-friendliness of the packages. Another disadvantage of the '683 patent is that the initial separation of the profiles 52 (see FIG. 2) creates

difficulties in the proper placement and alignment of the fastener halves on the film (e.g., in attaching fastener halves they must align at appropriate positions with respect to one another to ensure engagement). Connecting the fastener halves after the formation of the packages can thus lead to substantial alignment problems. It is notable that the '683 patent thus includes a plurality of parallel fastener profiles. (see col. 6, lines 25-29: "By having a plurality of the parallel fastener profiles 52, interengagement of the profiles of the folded section is facilitated since critical lateral alignment is not necessary.") Another disadvantage of the '683 patent is that during manufacture, the fastener halves must be conveyed individually along with the film (e.g., must each be attached thereto); however, if the fastener halves are interlocked, one half can be attached and the other half can be carried thereon. Another disadvantage is that the fastener is exposed to the product during transport such that product can become lodged in the fastener and interfere with the operation thereof (e.g., if the package is inverted or for some reason held topside down during shipping, crumbs, etc., can accumulate within the valleys of the fastener portions).

Other known methods, apparatuses and packages illustrative of the background art of the present invention are seen for example in U.S. Patent Nos.: 5,558,613 (assigned to Minigrip, Inc.); 5,557,907 and 5,592,802 (assigned to Illinois Tool Works, Inc.); 4,925,316 (assigned to Minigrip, Inc.); 4,709,398 (assigned to Minigrip, Inc.); 4,691,372 (assigned to Minigrip, Inc.); 5,330,269 (assigned to Toyo Aluminum Kabushiki Kaisha); 5,067,822 (assigned to Reynolds Consumer Products, Inc.); 4,782,951 (assigned to Oscar Mayer Foods Corp.); and 4,976,811 (assigned to Com-Pac International, Inc.).

### SUMMARY OF THE INVENTION

According to one aspect of the invention, a flexible package is produced which can be opened in a manner like common Frito-Lay, Inc., snack food packages, wherein the packages are "pinch-gripped" at opposite sides and pulled apart to open (see FIG. 1). Thus, the packages, both initially and throughout use, are opened in one simple step.

According to another aspect of the invention, a package is produced having both 1) a heat and/or pressure formed (preferably de-laminating) top seal and 2) a re-closable zipper, wherein both the top seal and the zipper are opened when a user opens a package with a simple "pinch-grip" opening method.

According to another aspect of the invention, 1) a vertical form fill process is used to quickly and efficiently package food product, 2) a re-closable zipper is attached to the package during the vertical form fill process, and 3) a user-friendly pinch-grip open package is produced. The method and apparatus can, thus, be easily adapted to large scale packaging operations.

According to one aspect of the invention, a flexible package is provided having an elastomeric front wall and an elastomeric rear wall; the front wall and the rear wall being sealed together at a top seal; a first zipper part attached to an inside surface of the front wall and having a first engagement member facing the rear wall; a second zipper part attached to an inside surface of the rear wall and having a second engagement member facing the front wall; the first and second engagement members being engaged together; the top seal being manually pinch-grip openable and the first and second engagement members being manually pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members; the front and rear walls having a sufficient strength to resist tearing and

deformation under the application of the pinch-grip pulling force during pinch-grip opening; and b) a food product stored inside the package below the first and second engagement members.

The terminology front and rear walls refers to opposing front and rear sides and encompasses separate wall members that are attached together (e.g., by one or more seams), wall members that are integrally formed, e.g., extruded together, etc. In this regard, although some of the preferred embodiments involve packages that are constructed from a single elongated sheet that is formed into a tube having front and rear walls by sealing along a back-seal, such a plastic tube could also, in one alternative embodiment, be formed by extruding an elongated tube.

According to another aspect of the invention, the top seal is a heat/pressure/dwell seal (defined herein-below). For example, the top seal can be formed by heat and pressure for a given dwell period. As another example, the top seal can be formed by pressure, without heat, for a given dwell period.

According to another aspect of the invention, the first engagement member has a male protrusion and the second engagement member has at least one protrusion forming a female socket, the male protrusion being engaged in the female socket.

According to another aspect of the invention, the front and rear walls are laminated plastic walls including at least one inner sealable layer and at least one outer wall layer.

According to another aspect of the invention, the first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at the engagement members. Although less preferred, the zipper parts can each have the same cross-sectional shape.

According to another aspect of the invention, the package

includes a food product therein. Most preferably, the food product includes salty, sweet or savory snack foods, which are known in the art as providing salty, sweet or savory tastes, such as for example certain snack foods containing salt, sugar, etc.

According to another aspect of the invention, a flexible package is provided having: front and rear walls, the front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer; a bottom seal formed between lower sides of the front and rear walls; a top seal formed between upper sides of the front and rear walls, the top seal including a seal between the inner sealable layers; a zipper located within the package proximate the top seal, the zipper having a first zipper part having a first engagement member extending lengthwise along the zipper part and a widened base having at least two points of sealant behind the base; the zipper also having a second zipper part having a second engagement member extending lengthwise along the zipper part and a widened base having at least two points of sealant behind the base; the first engagement member being engaged with the second engagement member; the at least two points of sealant on the first zipper part being sealed to the inner layer of the film at a first side of the vertical tube and the at least two points of sealant on the second zipper part being sealed to the inner layer of the film at a second side of the vertical tube; the seal between the inner sealable layers being openable by de-lamination and the engagement between the engagement members of the zipper being disengaged upon the application of a predetermined pinch-grip pulling force.

According to another aspect of the invention, a method of opening and re-closing a flexible package containing a food product is provided which includes the steps of: 1) providing in

combination: a) a flexible package having a elastomeric front wall and an elastomeric rear wall; the front wall and the rear wall being sealed together at a top seal; a first zipper part attached to an inside surface of the front wall and having a first engagement member facing the rear wall; a second zipper part attached to an inside surface of the rear wall and having a second engagement member facing the front wall; the first and second engagement members being engaged together; the top seal and the first and second engagement members being pinch-grip openable under a pinch-grip pulling force applied to the front and rear walls below the engagement members; the front and rear walls having a sufficient strength to resist tearing and deformation under the application of the pinch-grip pulling force during pinch-grip opening; and b) a food product stored inside the package below the first and second engagement members; 2) pinch-grip opening the package by manually pulling with a force of at least the pinch-grip pulling force opposite sides of the package below the zipper to open both the zipper, by disengaging the engagement portions, and the upper seal from the product side outward in a single pinch-grip opening step; 3) removing a portion of the food product from the package; 4) re-closing the package by manually re-engaging the first and second engagement members. According to another aspect of the invention, during the single step of pinch-grip opening, the zipper is at least partially disengaged before the top seal begins to open.

#### Advantages Of The Present Invention

The present invention has a number of significant advantages over the prior art. For example, the present invention provides a package having both a top end seal and a zipper that are both closed during transportation and handling of the product, whereby a) the quality and durability of the seal is enhanced, b) food



particles are inhibited from interfering with the zipper fastener, and c) a vertical form/fill/seal process like that of U.S. Patent No. 4,909,017 can be utilized to package product.

In addition, the present invention also provides a re-closable package that a consumer can open in a simple one-step process -- rather than an awkward two-step process requiring scissors or the like. The re-closable packages of the present invention can be opened using a "pinch grip" method commonly used to open existing snack food packages. It is thus not necessary to educate consumers on how to use the packages. The packages are thus very consumer friendly.

The above and other advantages, features and aspects of the present invention will be more readily perceived from the following description of the preferred embodiments taken together with the accompanying drawings and claims.

#### **BRIEF DESCRIPTION OF THE DRAWINGS**

The present invention is illustrated by way of example and not limitation in the accompanying drawings, in which like references indicate like parts, and in which:

FIG. 1 is a perspective view of a consumer grasping a package according to the preferred embodiments of present invention;

FIG. 2 is cross-sectional view of a top end of a package according to a preferred embodiment of the present invention;

FIG. 3 is a cross-sectional view of a zipper according to a preferred embodiment of the present invention;

FIG. 4 is a cross-sectional view of the zipper shown in FIG. 3 inside a package according to a preferred embodiment of the invention;

FIG. 5 is a cross-sectional view of a modified zipper inside a package according to another embodiment of the invention;

FIG. 6 is a cross-sectional view of a modified zipper inside a package according to another embodiment of the invention;

FIG. 7 is a cross-sectional view of one preferred construction of a sealing head assembly for manufacturing the packages;

FIG. 8 is a cross-sectional view of a modified construction of the sealing head assembly for manufacturing packages like that shown in FIG. 6;

FIG. 9 is a side view of a portion of a vertical/form/fill device used in one exemplary method for making flexible packages of the present invention; and

FIG. 10 is an elevational view of an exemplary strength testing apparatus.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

FIG. 1 shows a flexible package 10 according to a preferred embodiment having a top seal 20, a bottom seal 30, a re-closable zipper 40 (shown in dashed lines) proximate the top seal 20, and a vertical back seal 50. Although the back seal 50 is illustrated as a flange extending from the middle of one of the walls 11 or 12 (i.e., formed by attaching an interior surface of the tube to an opposite interior surface of the tube), the back seal could also be flush with the package material (i.e., formed by attaching an interior surface of the tube to an opposite outer surface of the tube to overlap the sides). In addition, the back seal 50 could also be formed at another location. In addition, various other embodiments could include multiple lengthwise seals or even no lengthwise seal such as if the tube is extruded.

As shown in FIG. 2, the package 10 includes a first wall 11 and a second wall 12. The top seal 20 is formed between the first and second walls 11 and 12 in a region A. The zipper 40 (not shown in FIG. 2) is accommodated in a region B between the

walls. Food product FP is stored in a region C within the package.

As shown in FIG. 1, the package 10 is opened via a "pinch-grip" method wherein a consumer pinches the walls 11 and 12 with his or her hands H (left hand shown) and pulls generally perpendicularly outwardly in the directions G, G' (see FIGS. 1 and 2).

At least the top seal is what is defined herein as "heat/pressure/dwell formed." The terminology heat/pressure/dwell formed is defined herein as encompassing seals that are made between two adjacent walls (e.g., opposite walls of a tube of film) by applying heat and/or pressure (e.g., between sealing jaws) for a given dwell period. The seal is most preferably a de-laminating seal. Although less preferred, the seal can be 1) a cohesive seal, 2) an adhesive seal formed by heat/pressure/dwell, 3) a cold seal formed by pressure and dwell only, or 4) any other known heat/pressure/dwell seal.

The top seal 20 is preferably a de-laminating seal wherein one or both of the inner layers 11i and/or 12i de-laminate from outer layers 11o and/or 12o. In this regard, the inner layers 11i and 12i of the first and second sidewalls are sealed together (e.g., via heat and/or pressure) and this seal is broken without tearing the outer layers 11o and 12o. Except for the de-laminated portions of the respective inner layers 11i and/or 12i, the structure of the package, as seen from the outside, remains intact. Although two layers are shown, the illustrated inner and/or outer layers can each include one or more layers.

In the preferred embodiment having a de-laminating seal, the walls of the packages 10 are preferably made with multi-layered plastic materials. In one exemplary embodiment, the package can include a) an outer polypropylene layer, b) a middle polyethylene

layer and c) an interior polypropylene layer. It should be apparent to those in the art that a variety of plastic and elastomeric materials can be used, including common additives. In preferred embodiments, the materials for the sidewalls 11 and 12 of the package are selected from materials disclosed in U.S. Patent No. 5,689,935 (assigned to the present assignee), the entire disclosure of which is also incorporated herein by reference.

The package material is also preferably a clear material having an acceptable clarity to view the contents (e.g., non-cloudy). Zippered packages having cut or severed tops are not easily made clear because films for making such packages typically require properties (e.g., additives) that can inhibit clarity.

The seal 20 preferably opens, e.g., de-laminates, upon the application of a force of less than about 3 lbs per linear inch, and more preferably of about 1 to 2 lbs per linear inch, the opening force being in the direction of the arrows G, G' shown in FIGS. 1 and 2. In less preferred embodiments, however, a larger opening force could be required. A preferred method of testing the seal strength or required opening force includes, as shown in FIG. 10: cutting a strip S having a width of about 1 inch from a top of the package 10; placing the strip S within known force testing equipment, such as equipment made by Instron Corp., having two opposite clamping members CM1 and CM2 that evenly clamp the ends of the cut-out portions of the walls 11 and 12 between upper and lower clamping members; and moving the clamping members slowly outwardly as shown by arrows in FIG. 10, such as at a rate of about 5 inches/minute. Under such conditions, the 1 inch wide portion of the seal 20 preferably opens upon the application of a force of less than 3 lbs, and more preferably

between about 1 to 2 lbs. Although the seal strengths have been discussed with reference to delaminating seals, other seals 20 encompassed by the present invention are also preferably openable within the above-noted ranges of applied forces.

According to the present invention, the package is opened by pinch gripping the sides below the top seal and pulling outward. In this manner, the top seal is opened in a direction away from the product FP inside the package (i.e., opening from the product side outward). This allows the package to be opened in a consumer-friendly manner. Moreover, if a de-laminating seal were opened from above the top seal down toward the product (i.e., opening from the consumer side), the film de-lamination could continue well into the product area and undesirably strip the zipper from the package material.

The zipper 40 is attached to the package in a manner to remain engaged under a force sufficient to "pinch-grip open" the top seal. For example, in the most preferred embodiments using a de-laminating top seal, the zipper 40 is constructed so that the inner layers 11i and 12i do not de-laminate under the zipper when the package is opened -- e.g., during "pinch-grip opening" of the package. Where the inner layers 11i and 12i can de-laminate, placement of a zipper 40 in a package 10 with de-laminating walls 11 and 12 presents difficulties.

The amount of force required to open the zipper 40 from either the consumer side or from the product side can be adjusted by varying the configuration of the male and female engagement members in a known manner. See e.g. U.S. Patent No. 5,558,613, the disclosure of which is incorporated herein by reference. The '613 patent indicates that "[i]n general, the profiles must be such as to provide relatively high resistance to opening from inside the package while rendering the package relatively easy to

open from the outside." In the present invention, however, the force required to open the zipper from inside the package is preferably reduced, preferably about equal to or less than the force required to open the zipper from outside the package. In one embodiment, for example, the zipper 40 opens from the inside by a force of less than about 2 ½ lbs per linear inch, preferably about 1½ to 2 lbs per linear inch (roughly 700-900 grams). The method shown in FIG. 10 is also a preferred method for measuring this zipper opening force, measuring for example a 1 inch wide section of the zipper.

Preferably, after the zipper is at least partially disengaged, the force required to continue disengagement of the engagement members is minimal or is greatly reduced. The maximum force required during the entire pinch-grip opening step can thus be minimized, if desired, since the peak of the force required to open the zipper can precede that required to open the top seal during pinch-grip opening. As some examples, this maximum force could be maintained under 3.5 lbs/inch, or even under 3 lbs/inch, or less. In addition, in cases where the force required to disengage the zipper essentially entirely precedes the force required to open the top seal during pinch grip opening, the maximum opening force could essentially be the force required to disengage the zipper or to open the top seal.

In the more preferred embodiments, the food product in the package is light-weight so that the risk of inadvertent opening from the product side outward (e.g., when the package is handled upside down) is reduced.

FIG. 3 illustrates a cross-section of a zipper 40 according to one preferred embodiment of the invention. The zipper 40 includes a male member 40-1 and a female member 40-2. The male and female members are preferably extruded plastic members. The

zipper can be formed in a variety of ways, but it is preferably extruded. Although any appropriate material can be used, in one exemplary embodiment the zipper can include a polyethylene material.

Preferably, the zipper includes two separate parts having finite lengths that are equal to, or slightly less than, the package width (separate fastener parts are also shown, for example, in the '017 patent). One part is attached to one side of the package and the other part is attached to the opposite side of the package. In a preferred construction, each of the two parts includes a respective engagement portion and a base portion. The engagement portions preferably include engageable protrusions. Most preferably, the protrusions include male and female protrusions.

In the illustrated embodiment, a first part 40-1 includes a base portion having a left flange 41-1 and a right flange 42-1 extending from opposite sides of a male projection 43-1. In addition, a second part 40-2 includes a base member having a left flange 41-2 and only a minimal portion 42-2 and a female socket 43-2. The male projection 43-1 is received in the female socket 43-2. Although the preferred arrangement is shown, the male and female portions can be reversed, if desired. In alternative embodiments, additional engagement portions, e.g., additional male and female portions, can also be included. However, these additional engagement portions are not needed and are also less preferred.

In one exemplary embodiment, the package 10 can be approximately 20 inches long from its top end to its bottom end. This size package can contain multiple servings of potato chips or the like; for example, it may contain about 20 ounces (about 570 grams) or about 20 servings. The package can also contain

one, two, three, etc., servings or another quantity of product. In one non-limiting example: the seal 20 can be about  $\frac{1}{2}$  inch wide (or alternatively about  $\frac{1}{4}$  inch wide, or less); the flanges 41-1, 41-2 and 42-1 can each be about  $\frac{1}{2}$  inch wide; the width across the male and female engagement members can be about  $\frac{1}{8}$  inch; and the seal 30 can be about  $\frac{1}{2}$  inch wide. Various other dimensions could also be used as would be apparent to those in the art based on this disclosure. In addition, a space or unsealed area can be located between the top seal 20 and the top of the zipper. This space can accommodate mis-alignment during placement of the zipper on the package. Preferably, this space is between about  $\frac{1}{4}$  to  $\frac{1}{2}$  inch. A smaller distance is beneficial because it reduces the package length, and it also reduces excess material at the top of the package. Among other things, reducing the extension distance between the bottom of the engagement portions of the zipper (which delineates the top end of the interior compartment) and the topmost end of the package provides an appearance more like prior packages and without an unsightly extension (i.e., a large top flange) off the top of the package. This extension distance can thus easily be under 2 inches, and even under  $1\frac{1}{2}$  inches, and even as low as about 1 inch, or less. Longer extension distances can also be used.

Although the package according to the present invention can be made with any known package making means, such as any horizontal or vertical filling apparatus, etc., it is preferably made in a vertical form/fill/seal apparatus. This illustrated zipper structure 40 has particular benefits in a vertical form/fill/seal apparatus of the type shown in U.S. Patent No. 4,909,017, the entire disclosure of which is incorporated herein by reference. In applying the zipper 40 in the '017 apparatus, the minimal portion 42-2 prevents the zipper from disengaging



upon downward entry into the vertical path, see point E in FIG. 9. Preferably, as discussed in the '017 patent and as shown in FIG. 9, the zipper parts 40-1 and 40-2 are initially in an interlocked condition on the film F, and the zipper is initially attached to the film F only at the base of the member 40-1.

In the illustrated embodiments, sealant layers C are formed on a rear side of each of a) the left flange 41-1, b) the right flange 42-1, and c) the left flange 41-2 to attach the zipper parts to the film. The sealant layers C are preferably co-extruded with the male and female sections 40-1 and 40-2, and are preferably made of any known sealant material to adhere to the inner layers 11i and 12i of the package 10 upon the application of pressure and/or heat.

Central sections S behind the socket 43-2 and the projection 43-1 are preferably provided with a sealant material like that of the sealant layers C. Preferably, such sealant is located in the section S of the part 40-2. It is not as necessary in all embodiments, however, to have such sealant in the section S of the part 40-1. Providing such sealant in section S of the part 40-2 ensures that separating forces during pinch-grip opening are applied more along the central axis CL of the engagement members. This feature is very beneficial when a minimal portion 42-2 is used. Without sealant applied at this location, shear and other forces during opening can result in, for example, de-lamination, stripping of the zipper seal from the film wall, etc. Each of the sealant layers S and C (when used) are preferably co-extruded with the sections 40-1 and 40-2.

With the zipper shown in FIG. 3, the sealant layers C on the left and right extensions 41-1 and 42-1 can be sufficient to maintain the section 40-1 attached to the inner layer 11i or 12i of the package 10. However, the member 40-2 preferably has its

section S formed with a sealant material. In an alternative preferred embodiment, the entire rear side of the member 40-2 can be modified to contain such a sealant material. Similarly, the entire rear side of the member 40-1 can also be modified to contain such a sealant.

As shown in FIG. 4, the left flanges 41-1 and 41-2 extend upward while the right flange 42-1 and the minimal portion 42-2 extend downward. Thus, one of the sides 40-1 or 40-2 has a shortened section (portion 42-2) extending into the package. As noted, this shortened section facilitates proper operation in a vertical form/fill/seal machine of the type disclosed in U.S. Patent No. 4,909,017. Without the sealant material behind the engagement portion (e.g., in the region S) of the member 40-2, outward movement of the wall 12 (see dashed lines in FIG. 4) can potentially cause shear and other forces sufficient to tear the member 40-2 from the inner layer 12i upon "pinch-grip opening" from the product side.

Although in the preferred embodiment shown the member 40-2 with the minimal portion 42-2 has the female socket 43-2, the female socket 43-2 and the male projection 43-1 can be reversed so that the male projection is on the member having the minimal portion.

The present invention most preferably provides a four point sealant attachment, wherein sealant is applied at opposite sides of a centerline CL through the projection 43-1 and the socket 43-2 on each of the members 40-1 and 40-2, even where one of the members 40-1 and 40-2 includes a minimal portion 42-2. In addition, the present invention also provides a four point sealant attachment, wherein a zipper part having a minimal portion 42-2 includes sealant at a location directly behind its engagement member and over the centerline CL.

In an alternative embodiment shown in FIG. 5, an extension 42-2' is provided on the member 40-2. The extension 42-2' helps to reduce shearing, etc., because a sealant layer can be applied behind the extension 42-2' to attach to the package 10. In this alternative, sealant portion S on the member 40-2 can also be eliminated. As noted above, however, this alternative is not desirable for use in vertical form/fill/seal apparatuses of the type shown in, for example, 4,909,017, but may be desirable for use in horizontal form/fill/seal apparatuses or in other package making devices. In less preferred variations of the embodiments shown in FIGS. 3 and 5, the sealant can be located only behind the portions 41-1 and 41-2 if the zipper to material bond is strong enough to keep the zipper from separating from the package even without attachment between the zipper and the package at other areas. In other less preferred embodiments, one or more of the extensions 41-1, 42-1, 41-2 and/or 42-2' can be eliminated as long as the zipper to package material bond, e.g., behind the members 43-1 and 43-2, is strong enough without such portions.

FIG. 6 shows another embodiment of the invention wherein the zipper is located in an inverted state within the flexible package. The embodiment shown in FIG. 6 is particularly advantageous in vertical form/fill/seal apparatuses. In this regard, the package is formed and filled in generally the conventional manner of vertical form/fill/seal devices. In this embodiment, however, the zipper 40 is placed adjacent the bottom seal 30 as shown, and preferably the graphics or printing on the film material is also inverted so that the bottom seal 30 is actually at the top end of the flexible packages that are formed. The zipper is first sealed to the flexible package, and product is then delivered into the vertical tube to fill the flexible package. The minimal portion 42-2 of the zipper 40 thus extends

towards the top of the flexible package. This embodiment has certain advantages during the manufacture of the packages. For instance, this embodiment can facilitate "stripping" ("stripping" is a well known step in vertical form/fill/seal apparatuses that includes using "stripper bars" that initially contact the vertical tube to move contents towards the bottom of the package before forming the top seal) by re-locating the zipper 40 proximate the bottom seal 30. As shown in FIG. 8 (discussed below), the structure in FIG. 6 enables the zipper sealing jaws to be located above the sealing jaws for the top and bottom seals 20 and 30.

FIG. 7 shows a preferred embodiment of the sealing jaws, or sealing blocks, that form the top and bottom seals 20 and 30 and that seal the zipper 40 to the package material. The sealing blocks 61 and 63 are used to form the upper and lower seals 20 and 30, and the sealing blocks 62 and 64 are used to seal the zipper 40 to the packaging material. Preferably, the blocks 61 and 62 are mounted to move together, and the blocks 63 and 64 are mounted to move together. More specifically: profiles 61A and 63A form a bottom seal 30 of an upper package; profiles 61B and 63B form the top seal 20 of a lower package; profiles 62A and 64A seal the zipper portions 41-1 and 41-2 to the flexible package material; and recessed profiles 62B and 64B seal the zipper in the region of the engagement members 43-2 and 43-1 to the flexible package material. As shown in FIG. 7, in order to more vigorously seal the package walls 11 and 12 to the zipper 40, the profile 62B can include a resilient portion 65, e.g., made with rubber such as for example a silicone rubber, to enable a greater amount of pressure to be applied to the location of the zipper proximate the engagement members (i.e., proximate the male projection 43-1 and the female socket 43-2) without damaging such

portions, to enhance sealing capability with the package material. For example, applying rubber at the male side of the embodiment shown in FIG. 4 facilitates applying back-pressure at the female side, so that the female side (having the minimal portion 42-2) can have a greater pressure applied to ensure engagement of the sealant behind central section S behind the socket 43-2 to the package film material. In cases where the portion 65 is not made of rubber, the region therein can be integral with the block, e.g., metal. In such cases, the zipper is preferably constructed to absorb pressure to avoid damage when back pressure is applied.

As discussed, FIG. 8 shows a modified embodiment of the sealing blocks for manufacturing a flexible package as shown in FIG. 6. The features in FIG. 8 are like that shown in FIG. 7, except that the member 61 is mounted below the member 62 and the member 63 is mounted below the member 64. In this manner, when the jaws 61 and 63 are brought towards one another in the operation of the device, the zipper should not interfere with the motion of the jaws, stripping should be facilitated, such as with stripper bars mounted immediately below the jaws 61 and 63, etc.

While the present invention has been shown and described with reference to preferred embodiments presently contemplated as best modes for carrying out the invention, it is understood that various changes may be made in adapting the invention to different embodiments without departing from the broader inventive concepts disclosed herein and comprehended by the claims which follow.

## CLAIMS

What is claimed is:

1. In combination:

a) a flexible package having

a elastomeric front wall and an elastomeric rear wall;  
said front wall and said rear wall being sealed

together at a top seal;

a first zipper part attached to an inside surface of  
said front wall and having a first engagement member facing said  
rear wall;

a second zipper part attached to an inside surface of  
said rear wall and having a second engagement member facing said  
front wall;

said first and second engagement members being engaged  
together;

said top seal being manually pinch-grip openable and  
said first and second engagement members being manually pinch-  
grip openable under a pinch-grip pulling force applied to said  
front and rear walls below said engagement members;

said front and rear walls having a sufficient strength  
to resist tearing and deformation under the application of said  
pinch-grip pulling force during pinch-grip opening; and

b) a food product stored inside said package below said  
first and second engagement members.

2. The combination of claim 1, wherein said top seal is a  
heat/pressure/dwell seal.

3. The combination of claim 2, wherein said top seal is a  
heat, pressure and dwell seal.

4. The combination of claim 2, wherein said top seal is a non-heated, pressure and dwell seal.

5. The combination of claim 1, wherein said engagement members include interlocking protrusions.

6. The combination of claim 5, wherein said first engagement member has a male protrusion and wherein said second engagement member has at least one protrusion forming a female socket, said male protrusion being engaged in said female socket.

7. The combination of claim 1, wherein said front and rear walls are laminated plastic walls including at least one inner sealable layer and at least one outer wall layer.

8. The combination of claim 1, wherein said first engagement member consists of a single male protrusion and wherein said second engagement member consists of a single female socket, said male protrusion being engaged in said female socket.

9. The combination of claim 1, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.

10. The combination of claim 1, wherein said food product includes salty, sweet or savory snack foods.

11. The combination of claim 10, wherein said food product includes snack food chips.

12. The combination of claim 11, wherein said food product includes potato or corn based chips.

13. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.

14. The combination of claim 1, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.

15. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about  $2 \frac{1}{2}$  lbs/inch.

16. The combination of claim 1, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about  $1 \frac{1}{2}$  to 2 lbs/inch.

17. In combination:

- a) a flexible package, including
  - front and rear walls, said front and rear walls being laminated plastic walls including at least one inner sealable layer and at least one outer wall layer,
  - a bottom seal formed between lower sides of said front and rear walls;
  - a top seal formed between upper sides of said front and rear walls, said top seal including a seal between said inner sealable layers;
  - a zipper located within said package proximate said top seal, said zipper having a first zipper part having a first



engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said zipper also having a second zipper part having a second engagement member extending lengthwise along said zipper part and a widened base having at least two points of sealant behind said base;

said first engagement member being engaged with said second engagement member;

said at least two points of sealant on said first zipper part being sealed to said inner layer of said film at a first side of said vertical tube and said at least two points of sealant on said second zipper part being sealed to said inner layer of said film at a second side of said vertical tube;

said seal between said inner sealable layers being openable by de-lamination and said engagement between said engagement members of said zipper being disengaged upon the application of a predetermined pinch-grip pulling force; and

b) food product stored within said package between said closed zipper and said bottom seal.

18. The combination of claim 17, wherein said first engagement member has a male protrusion and said second engagement member has a female socket, said male protrusion being engaged with said female socket.

19. The combination of claim 17, wherein said first engagement member consists of a single male protrusion and said second engagement member consists of a single female socket, said male protrusion being engaged with said female socket.

20. The combination of claim 17, wherein said first and second zipper parts have cross-sectional shapes that are different from one another and are separate pieces that are connected together only at said engagement members.

21. The combination of claim 17, wherein said food product includes salty, sweet or savory snack foods.

22. The combination of claim 21, wherein said snacks foods include potato or corn based chips.

23. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of less than about 3 lbs/inch.

24. The combination of claim 17, wherein said top seal is manually pinch-grip openable under a pinch-grip pulling force of between about 1 to 2 lbs/inch.

25. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of less than about  $2 \frac{1}{2}$  lbs/inch.

26. The combination of claim 17, wherein said first and second engagement members are manually pinch-grip openable under a pinch-grip pulling force of between about  $1 \frac{1}{2}$  to 2 lbs/inch.

27. A method of opening and re-closing a flexible package containing a food product, comprising the steps of:

1) providing in combination:

a) a flexible package having

a elastomeric front wall and an elastomeric rear wall;  
said front wall and said rear wall being sealed  
together at a top seal;

a first zipper part attached to an inside surface of  
said front wall and having a first engagement member facing said  
rear wall;

a second zipper part attached to an inside surface of  
said rear wall and having a second engagement member facing said  
front wall;

said first and second engagement members being engaged  
together;

said top seal and said first and second engagement  
members being pinch-grip openable under a pinch-grip pulling  
force applied to said front and rear walls below said engagement  
members;

said front and rear walls having a sufficient strength  
to resist tearing and deformation under the application of said  
pinch-grip pulling force during pinch-grip opening; and

b) a food product stored inside said package below said  
first and second engagement members;

2) pinch-grip opening said package by manually pulling with  
a force of at least said pinch-grip pulling force opposite sides  
of said package below said zipper to open both said zipper, by  
disengaging said engagement portions, and said upper seal from  
the product side outward in a single pinch-grip opening step;

3) removing a portion of said food product from said  
package;

4) re-closing said package by manually re-engaging said  
first and second engagement members.

28. The method of claim 27, wherein during said single step

of pinch-grip opening, said zipper is at least partially disengaged before said top seal begins to open.

29. The method of claim 28, wherein after said zipper is at least partially disengaged, the force required to continue disengagement of the engagement members is greatly reduced.

30. The method of claim 27, further including the step of providing said top seal with an engagement strength of less than about 3 lbs/inch, such that said top seal disengages upon a pinch-grip pulling force greater than said engagement strength.

31. The method of claim 27, further including the step of providing said top seal with an engagement strength of between about 1 to 2 lbs/inch, such that said top seal disengages upon a pinch-grip pulling force greater than said engagement strength.

32. The method of claim 27, further including the step of providing said zipper with a zipper engagement strength of less than about  $2 \frac{1}{2}$  lbs/inch, such that said engagement portions disengage upon a pinch-grip pulling force greater than said zipper engagement strength.

33. The method of claim 30, further including the step of providing said zipper with a zipper engagement strength of less than about  $2 \frac{1}{2}$  lbs/inch, such that said engagement portions disengage upon a pinch-grip pulling force greater than said zipper engagement strength.

34. The method of claim 27, further including the step of providing said zipper with a zipper engagement strength of

between about 1 ½ to 2 lbs/inch, such that said engagement portions disengage upon a pinch-grip pulling force greater than said zipper engagement strength.

35. The method of claim 30, further including the step of providing said zipper with a zipper engagement strength of between about 1 ½ to 2 lbs/inch, such that said engagement portions disengage upon a pinch-grip pulling force greater than said zipper engagement strength.

36. The method of claim 27, further including the step of providing said top seal by heat/pressure/dwell forming said top seal.

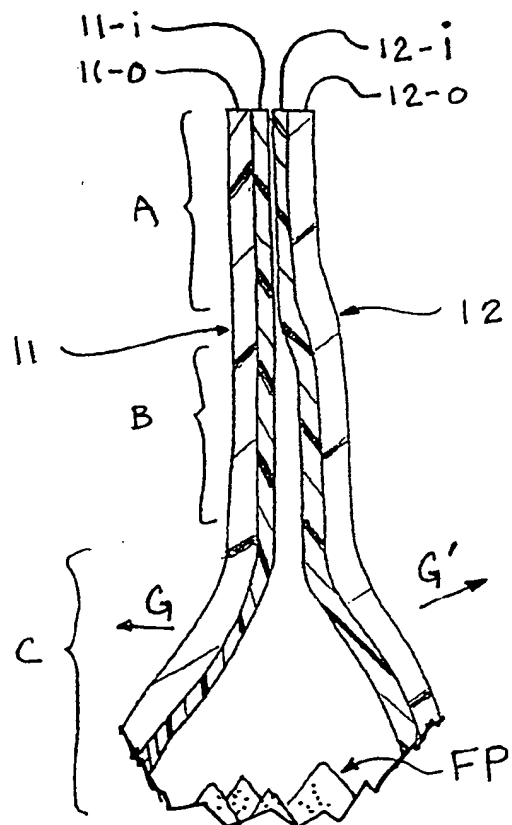
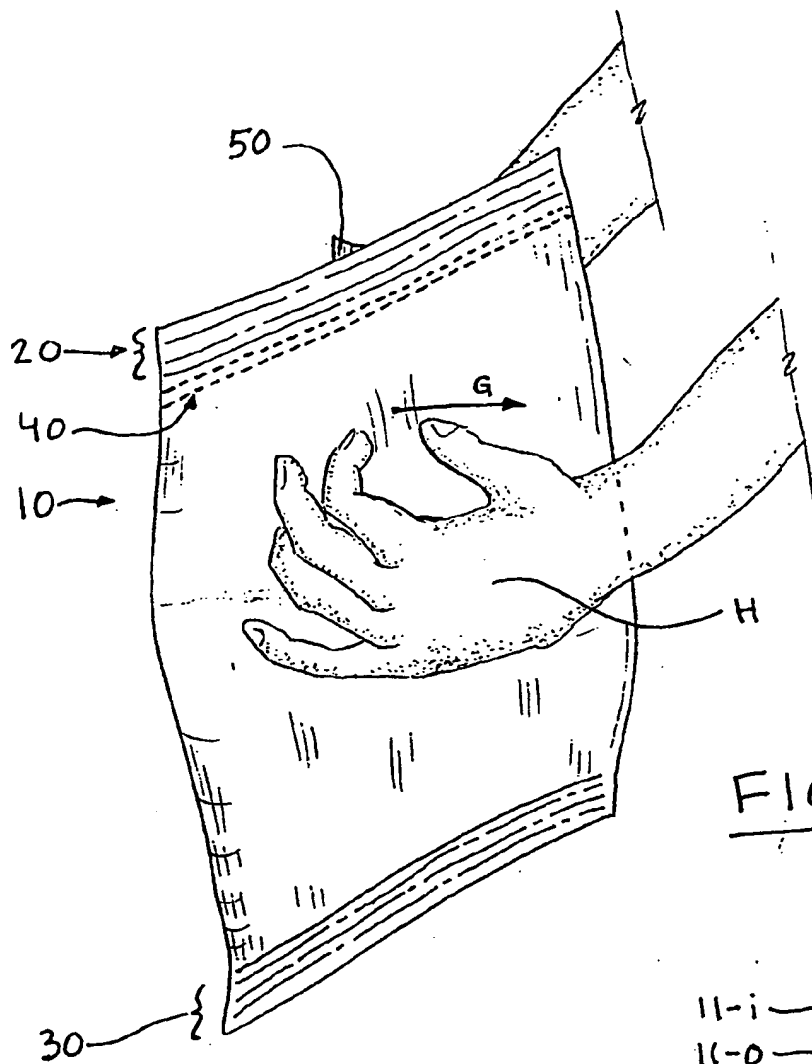
37. The method of claim 36, wherein said heat/pressure/dwell forming includes applying heat and pressure for a dwell period.

38. The method of claim 36, wherein said heat/pressure/dwell forming includes applying pressure, without heat, for a dwell period.

#### ABSTRACT OF THE DISCLOSURE

A modified flexible package includes a front elastomeric wall and a rear elastomeric wall. The front wall and the rear wall are sealed together at a top seal at a top end of the side walls. The top seal is formed by applying heat and/or pressure for a given dwell period, and is preferably a de-laminating seal. A first zipper part is attached to an inside surface of the front wall and has a first engagement member facing the rear wall. A second zipper part is attached to an inside surface of the rear wall and has a second engagement member facing the front wall. The first and second engagement members are engaged together. Both the top seal and the zipper engagement members are "pinch-grip opened" under a pinch-grip pulling force applied to the front and rear walls below the zipper. The front and rear walls have a strength sufficient to resist tearing and deformation under the application of the pinch-grip pulling force during pinch-grip opening. The invention provides a re-closable package that can be opened in an easy one-step manner -- "pinch grip opening" -- without an additional step of cutting, tearing or the like.

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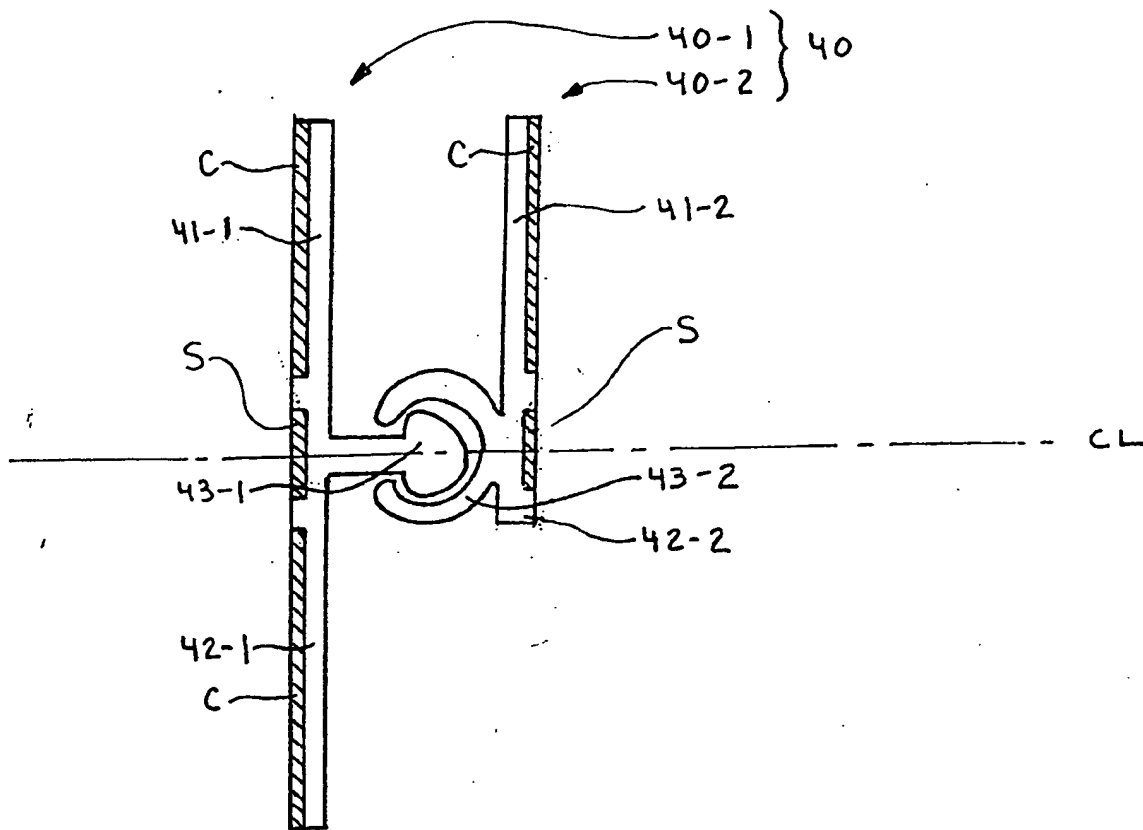


FIG. 3



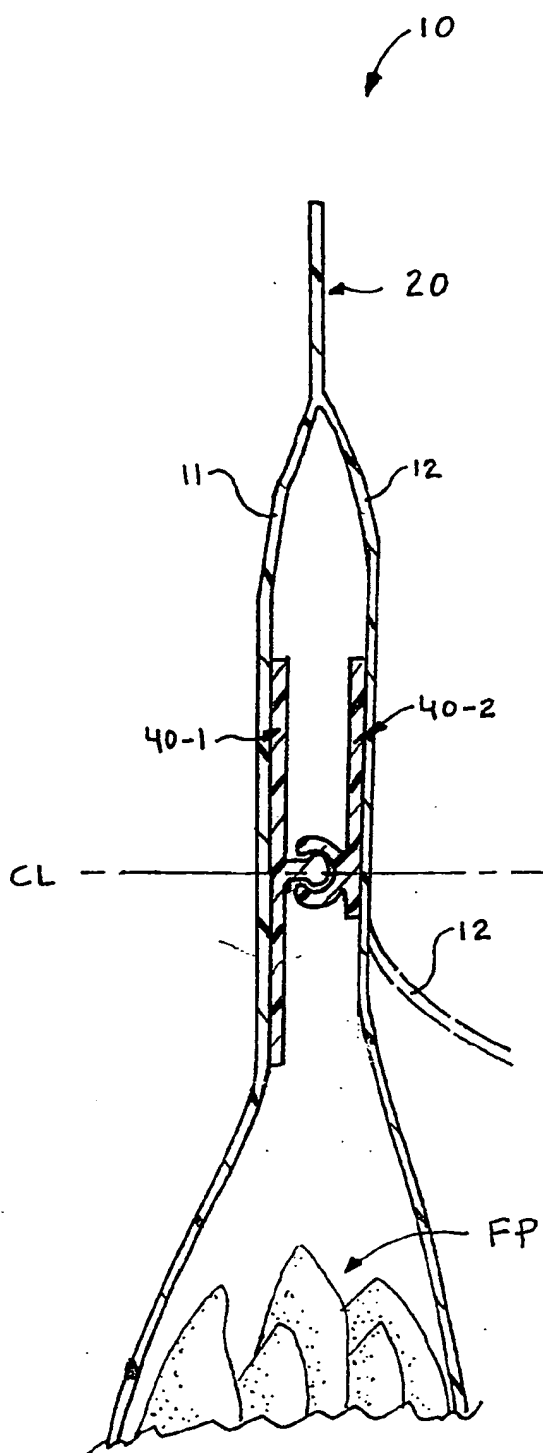


FIG. 4

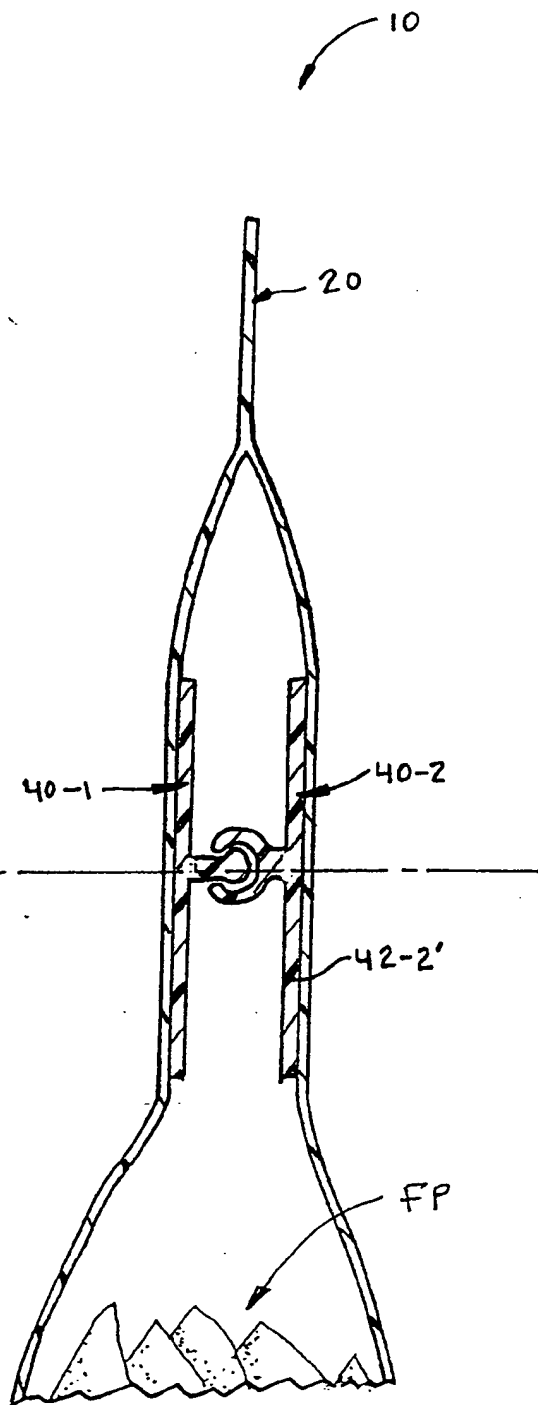


FIG. 5

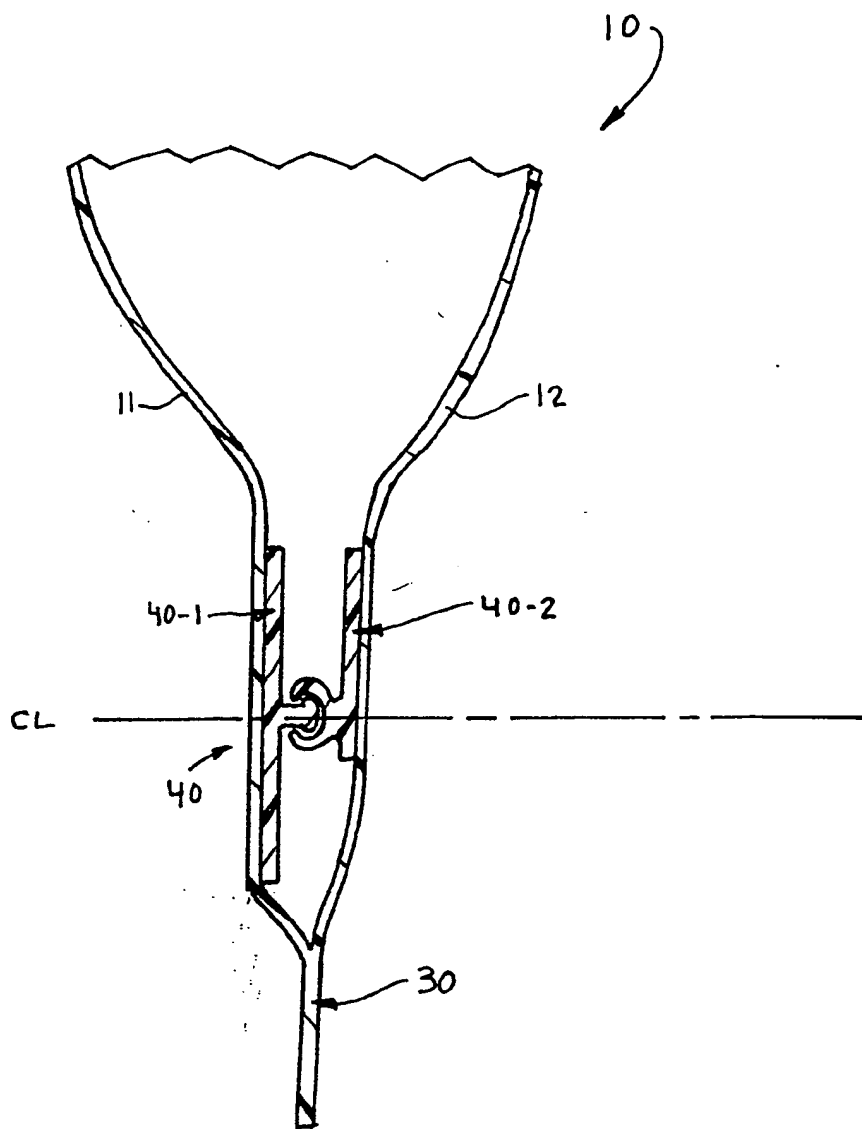


FIG. 6

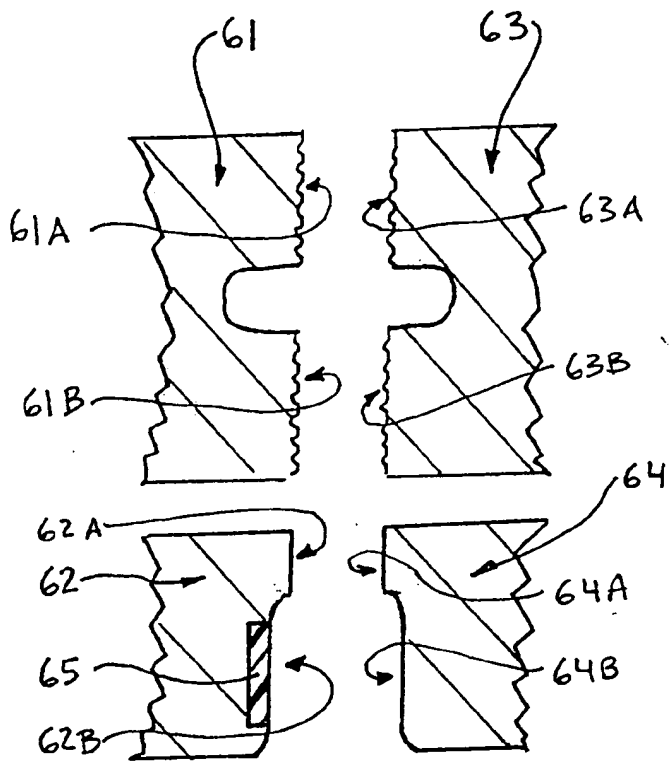


FIG. 7

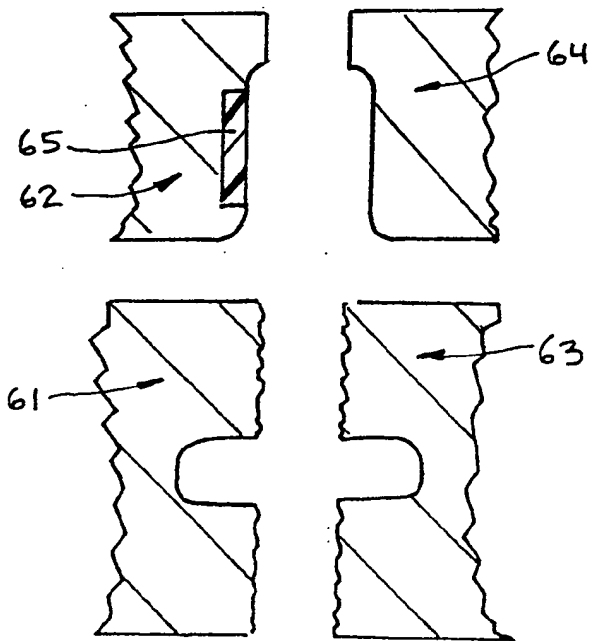


FIG. 8

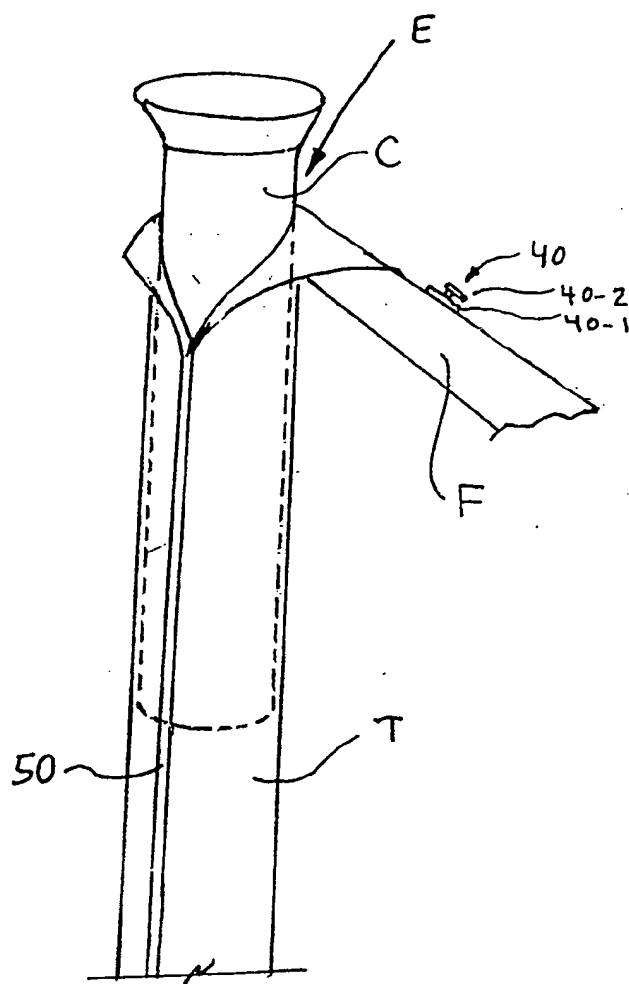


FIG. 9

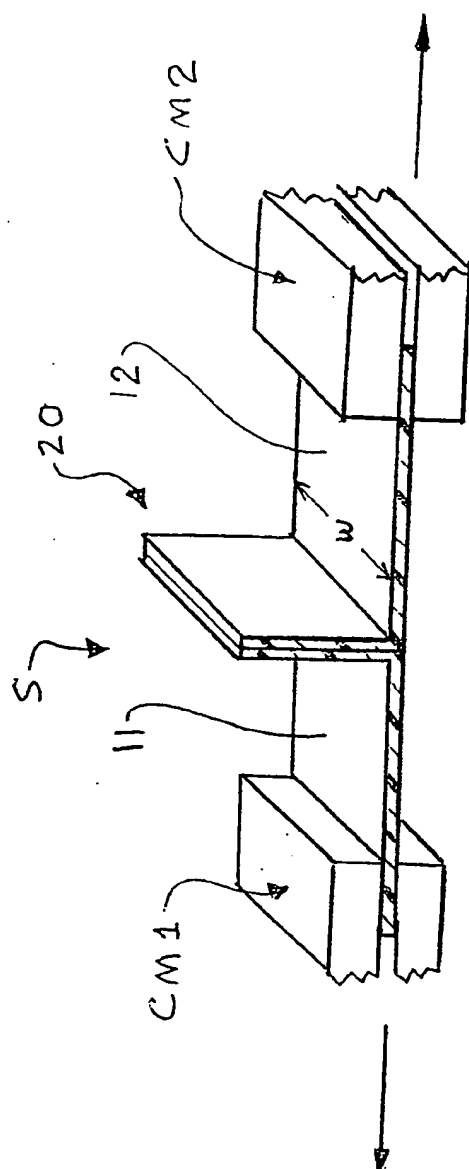


FIG. 10

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Marc A. Jurgovan et al.

Serial No.: (Divisional of U.S.  
Serial No.: 09/079,382)

Examiner: Not yet assigned

Filed: Herewith

Group Art Unit: Not yet assigned

For: FLEXIBLE PACKAGE HAVING  
A RE-CLOSABLE ZIPPER

**PRELIMINARY AMENDMENT**

Assistant Commissioner for Patents  
Washington, D.C. 20231

Dear Sir:

Prior to examination of the above-identified patent application, please make the following amendments.

**IN THE SPECIFICATION:**

On page 1, after "Background of the Invention" insert: -- This application is a continuation of U.S. Application No. 09/079,382 entitled FLEXIBLE PACKAGE HAVING A RE-CLOSABLE ZIPPER, filed on May 15, 1998. --

**IN THE CLAIMS:**

Please cancel claims 27-38.

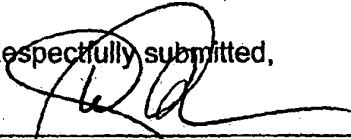
**REMARKS**

This application is being filed as a divisional application in response to a restriction requirement made during the prosecution of Serial No. 09/079,382. The

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specification has been amended to note the cross reference to the originally filed application. The claims have been amended to cancel claims 27-38 thereby leaving claims 1-26 for examination in this application.

Respectfully submitted,



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